







THE CAPITOL AT WASHINGTON

GOVERNMENT AND POLITICS IN THE UNITED STATES

A Textbook for Secondary Schools

BY

WILLIAM BACKUS GUITTEAU, PH.D.

Superintendent of Schools, Toledo, Ohio

WITH ILLUSTRATIONS



BOSTON NEW YORK CHICAGO
HOUGHTON MIFFLIN COMPANY
The Riverside Press Cambridge

JK279
G85

COPYRIGHT, 1911, BY WILLIAM BACKUS GUITTEAU

ALL RIGHTS RESERVED

©CL A283665

TO
THE BOYS AND GIRLS
OF THE
TOLEDO HIGH SCHOOLS

PREFACE

MOST teachers of Civics agree that the presentation of this subject should commence with local government, and then proceed to the study of the government of the State, and finally of the Nation. Not only is this the correct order historically, but by beginning with local government, the pupil first studies those governmental agencies with which he is most familiar. School district, township, and municipal governments are nearer to his daily life and experiences; and from this basis of civic facts he can proceed more readily to the study of State and federal government.

In presenting each of these fields of study, the same general plan of treatment has been followed: first, the origin of government has been briefly outlined, so that the relation of government to history may be understood; second, the structure or machinery of government has been described; and third, the functions or activities of government have been presented, special emphasis being laid upon this phase of the subject. This emphasis is in accordance with the legitimate demand that greater attention be given to the study of applied civics; and accordingly more than half of the chapters of the text are devoted to the work which governments perform.

In order to make the study of government concrete and vital, the largest possible use should be made of such material as town warrants, legislative bills, sample ballots, presidential messages, and the like. A detailed list of material for this purpose is given in Appendix "D." As a further aid to supplementary work, a suggestive list of questions and exercises has been placed at the end of each chapter, together with a chapter bibliography. These questions and exercises should be assigned to different members

of the class, in order that each pupil may learn to use the reference works cited, to distinguish between essential and relatively unimportant facts, and to prepare acceptable reports upon special topics.

A list of the works deemed indispensable for the school's reference library will be found in Appendix "E"; and if funds permit, many others should be included, chosen from the chapter bibliographies.

Members of the class should be encouraged to visit township, county, and municipal offices; and local officials should be invited to come before the class and describe the business of their departments. Added interest may be secured by organizing the class into a town meeting, or as a city council, State legislature, or branch of Congress. A bulletin board in the classroom for newspaper clippings pertaining to governmental affairs will prove both interesting and helpful.

The author of this text desires to express his sincere appreciation of the kindness of several friends in reading portions of the manuscript, and in aiding him with valuable suggestions and corrections. To Professor R. C. Brooks of the University of Cincinnati, he is indebted for reading the chapters on local government. Professor H. V. Ames of the University of Pennsylvania has examined the historical chapters, as well as those on the State and federal constitutions. Professor F. M. Taylor of the University of Michigan has read the chapters on finance. Professor J. W. Jenks of Cornell University has given many helpful suggestions concerning the discussion of the federal government. Professor G. W. Knight of the Ohio State University has done the same for the chapters on Relations of State and Federal Government, Political Parties, and Nominations and Elections. Professor Wilbur Siebert of the Ohio State University has read the chapters on the State Legislature, the State Executive, and the State's Economic Functions.

Professor Carl Kelsey of the University of Pennsylvania has given valuable suggestions concerning the discussion of Crimes and Charities. The chapters on the State and Federal Judiciary have been revised and greatly improved by my friends C. F. Watts and Lloyd T. Williams of the Toledo Bar. The completed manuscript has been read by W. H. Cushing of Framingham, Mass., and C. W. Gayman of Toledo, Ohio, both of whom have offered valuable comments and criticisms. Finally, the author desires to express his sincere appreciation of the constant and discriminating assistance of Miss N. J. Heim in preparing the manuscript for publication, collecting the statistics, and making the index. The illustrations have been selected by Hanson H. Webster of the editorial staff of the publishers. The graphical charts were prepared by Mr. George Dunn, of the Toledo Central High School.

While the author is of course solely responsible for all errors and shortcomings in the work, he feels a deeper sense of obligation and gratitude to these friends than he can express by a formal acknowledgment in a preface.

WILLIAM BACKUS GUITTEAU.

TOLEDO, OHIO,
January 9, 1911.

ANALYSIS OF CONTENTS

PART I

LOCAL GOVERNMENTS

I. SOME ELEMENTS OF POLITICS	1
Origin of the State — Evolution of the State — Preliminary Definitions and Distinctions — The Forms of the State — Classification of Governments — Immediate and Representative Governments — Limited and Unlimited Governments — Monarchic, Aristocratic, and Democratic Governments — Hereditary and Elective Governments — Centralized and Dual Governments — Consolidated and Coördinated Governments — Presidential and Parliamentary Governments — Characteristics of American Government — The Functions of Government.	
II. ORIGIN OF RURAL LOCAL GOVERNMENT	14
Relation of Local to State Governments — Classification of Local Governments — Origin of Town Government — Historical Development of the English Town — Origin of the County — Later Development of the English Shire — Establishment of Towns in New England — Characteristics of Early New England Towns — Rise of the Southern County — Government of the Southern County — The Southern Parish — Contrast between New England and Southern Systems — Township-County System of the Middle Colonies.	
III. STRUCTURE AND FUNCTIONS OF RURAL LOCAL GOVERNMENT	24
General Features of New England Towns — Important Elements in Town Government — The New England County — The Southern County — Minor Local Divisions in the South — Township-County System of Local Government — Origin of the Township in the West — Development of the Congressional Township — Differentiated Types of Township-County System — The Town-Meeting in the Central States — The Supervisor and the Township Board — Other Township Officers — The School District — Organization of County Board in the Central States — Functions of the County Board — The County's Judicial Officers — Financial and Other County Officers — Local Government in the Western States.	

IV. MUNICIPAL DEVELOPMENT	38
Definition of City — Origin of Cities — Development of Cities — English Origin of American Municipal Institutions — History of the English Municipal Borough — Characteristics of British Municipal Government — American Municipal History — Colonial Cities — Relation of Cities to State Governments — Second Period of American Municipal History — Third Period, 1825-1850 — Fourth Period, 1850-1875 — Changes in Municipal Organization during Fourth Period — Recent Municipal History, 1875 to the Present Time — Changes in Municipal Organization — The Commission Plan — Proposed Improvements in Municipal Government.	
V. MUNICIPAL ORGANIZATION	50
Organization of the Council — Legislative Powers of the Council — The Council's Police Power — Financial Powers of the Council — Miscellaneous Powers of the Council — Procedure in City Councils — The Mayor — Legislative Powers of the Mayor — The Mayor's Administrative Powers — Judicial Powers of the Mayor — Administrative Officials — Board System vs. Single Commissioner System.	
VI. MUNICIPAL ACTIVITIES	61
Police Administration — Control of Police Administration — Protection from Fire — Control of Public Health — Public Education — Public Recreation — Charities and Poor Relief — The City Street — Street Cleaning and Removal of Waste — Sewerage Systems — Water Supply — Public Lighting — Street Railways — The Problem of Municipal Monopolies — Arguments for Municipal Ownership — Arguments against Municipal Ownership.	

PART II

III STATE GOVERNMENTS

VII. ORIGIN OF STATE GOVERNMENTS	74
The Establishment of Colonies — Classification of Colonial Governments — Common Characteristics of the Colonies — The Colonial Legislature — The Colonial Governor — Relations with Great Britain to 1760 — Policy of Imperialism — The Dispute over Representation — The Mercantile Colonial System — Resistance to Great Britain — Declaration of Independence.	
VIII. STATE CONSTITUTIONS	86
Early State Constitutions — Parts of the State Constitution — Bills of Rights — Early State Legislatures — The State Executive — The Judiciary — Checks and Balances — Development of State	

Constitutions — Second Period, 1800–1860 — Third Period, 1860 to the Present Time — Enactment of State Constitutions — Amendment of State Constitutions — Amendment by Constitutional Convention — Amendments proposed by Legislatures — Amendment through the Initiative and Referendum — Authority of State Constitutions.

IX. THE STATE LEGISLATURE 95

Composition of the Legislature — The Members of the Legislature — Organization and Procedure — The Enactment of Laws — The Governor's Veto — Scope of State Legislative Power — Non-Legislative Duties — Limitations upon Powers of State Legislatures — Limitations imposed by the Federal Constitution — Limitations implied from Federal Constitution — Limitations imposed by State Constitutions — Limitations implied from the Nature of Republican Government — Direct Legislation.

X. THE STATE EXECUTIVE 106

Contrast between State and Federal Executives — Election and Term of the Governor — Qualifications and Salary — Administrative Powers and Duties — Political Duties — State Governors under the Federal Constitution — Other Principal Executive Officers — The Lieutenant-Governor — The Secretary of State — State Auditor or Comptroller — The State Treasurer — The Attorney-General — State Superintendent or Commissioner of Schools — Appointive Officers of State Administration — State Boards or Commissions — Civil Service Reform.

XI. THE STATE JUDICIARY 115

Development of Colonial Courts — The Common Law — Equity — Our System of Law — System of State Courts — Inferior Courts — Courts of General Original Jurisdiction — Courts of Last Resort — Special State Courts — Choice of State Judges — Tenure of State Judges — Salary and Qualifications — Subordinate Officers of Courts — The Protection of Rights — Procedure in Civil Cases — Adjudging Legislative Acts Unconstitutional — Principles of Constitutional Interpretation — Judicial Control of Executive Officials — Relation of State to Federal Courts — Interstate Judicial Relations.

XII. THE POLICE POWER 129

Definition of the Police Power — General Characteristics of Police Power — Scope of the State's Police Power — Maintenance of Public Peace and Order — Preservation of the Public Safety — Promotion of the Public Health — Protection of the Public Morals — Miscellaneous Examples of the Police Power — Regulation of Trades, Callings, and Occupations — Regulation of the Liquor Traffic — Regulation of Labor — Regulation of Charges and Prices — Regulations in Prevention of Frauds and Oppression.

XIII. CRIME AND ITS PUNISHMENT 140

Wrong-Doing in Early Society — Classification of Wrongs — The Definition of Crime — Classification of Crimes — The Causes of Crime — The Repression of Crime — First Steps in a Criminal Action — Framing a Formal Accusation — Arraignment and Trial — The Theory of Punishment — Places of Imprisonment — The Treatment of Criminals — The Prevention of Crime — Treatment of Juvenile Offenders.

XIV. PUBLIC CHARITIES 151

Relation of Government to Charity — The Causes of Poverty — General Methods of Poor Relief — Care of Dependent Children — Medical Charities — Dealing with the Vagrant Poor — Charity Organization Societies — Care of Defective Classes — The Cost of Charities.

XV. CONTROL OF ECONOMIC INTERESTS 158

Economic Functions of Government — Lands — Forests, Game, and Fish — Agriculture and Agricultural Interests — Labor and Factory Laws — Characteristics and Development of Corporations — Organization and Control of Corporations — Regulation of Banks, Insurance Companies, and Railroads — Industrial Combinations — Transportation — Roads and Bridges — Canals and River Navigation — Weights and Measures — Trade-Marks.

XVI. PUBLIC EDUCATION 172

Early and Modern Education — State Control of Education — Elementary or Common Schools — High School or Secondary Education — Colleges and Universities — The State University — Administration of Public Schools — The District System — The Township System — City School Systems — The County System — State Administration of Schools — Text-Books — Employment and Certification of Teachers — Compulsory Education — School Revenues — Federal Aid to Public Education — Educational Work of the Federal Government.

XVII. STATE FINANCE 187

Definition of Finance — Purposes of Public Expenditures — Expenditures of National, State, and Local Governments — State and Local Expenditures — Sources of Public Revenue — Sources of Direct Revenue — Sources of Derivative Revenue — General Principles of Taxation — Extent of the Taxing Power — Classification of Taxes — Assessment of General Property Tax — Equalization — Levy and Collection of Taxes — Defects of the General Property Tax — Mortgage Taxes — Inheritance Taxes — Corporation Tax — Poll or Capitation Tax — Income Taxes — License Taxes — Franchise Taxes — Reforms in Taxation — Borrowing Power of State Governments — History of State Debts.

PART III

THE NATIONAL GOVERNMENT

XVIII. ORIGIN OF THE FEDERAL GOVERNMENT 207

Beginning of the Federal Union — Conditions affecting Colonial Union — The New England Confederation — The Albany Plan of Union (1754) — Stamp Act Congress (1765) — Growth of Spirit of Resistance — First Continental Congress (1774) — The Second Continental Congress (1775-1781) — Formation of the Confederation — Character of the Confederation Government — Defects of the Confederation — Failure of the Confederation Government.

XIX. THE FORMATION OF THE CONSTITUTION 215

The Alexandria Conference (1785) — The Annapolis Convention (1786) — The Constitutional Convention (1787) — Organization — The Contest over Nationalism — The Great Compromise — The Three-Fifths Compromise — Navigation Acts and the Slave Trade — Other Compromises and Modifications — Sources of the Constitution — Completion of the Convention's Work — Ratification.

XX. THE AMENDMENT AND DEVELOPMENT OF THE CONSTITUTION 226

Modification of the Original Constitution — Process of Constitutional Amendment — The Bill of Rights — The Eleventh Amendment — The Twelfth Amendment — Amendments during the Reconstruction Period — Constitutional Changes through Interpretation — The Doctrine of Implied Powers — Chief Sources of Implied Powers — Constitutional Changes through Usage — Influence of Usage upon the Executive — Usages affecting Congress — Constitutional Modifications through the Party System.

XXI. RELATIONS OF FEDERAL AND STATE GOVERNMENTS . 235

The Federal System — General Distribution of Powers — Powers of the National Government — Classification of Federal Powers — Interpretation of Federal Powers — Powers of State Governments — Concurrent Powers — Prohibitions upon the National Government — Restrictions designed to protect Individual Liberty — Other Limitations upon the Federal Government — Express Prohibitions upon State Governments — Second Class of Express Limitations — Implied Limitations upon State Governments — Privileges of States in the Union — Duties of the States in the Union — Interstate Obligations — Public Acts and Judicial Proceedings — Interstate Extradition.

XXII. THE SENATE 248

Congress a Two-House Body — Equal Representation of States — Election of Senators — Political Agencies modifying Indirect Election — The Senatorial Term — Qualifications of Senators — Rights and Privileges of Members — The Senate's Powers in Legislation — Executive Functions of the Senate — Power to approve Treaties — Confirmation of Executive Appointments — The Senate's Judicial Function.

XXIII. THE HOUSE OF REPRESENTATIVES 259

Composition of the House — The Method of Apportionment — Districting a State — The Suffrage — The Election of Representatives — The Term of Representatives — Qualifications for Representatives — Rights, Privileges, and Disabilities of Members — Special Powers of the House.

XXIV. CONGRESSIONAL METHODS 267

Term and Sessions of Congress — Internal Organization of Congress — The Quorum — Presiding Officer of the Senate — The Speaker of the House of Representatives — Chief Sources of the Speaker's Power — The Committee on Rules — Congressional Committees — The Process of Legislation — Relations of Congress to the President — Limitations on the Legislative Powers of Congress — Classification of Congressional Powers — Express Powers of Congress — Implied Powers.

XXV. ORGANIZATION OF THE FEDERAL EXECUTIVE . . . 285

Method of electing the President — Number and Choice of Electors — Qualifications for Electors and Voters — Time of Choosing Electors — Meeting of the Electoral College — Counting the Electoral Vote — The Disputed Election of 1876 — Election by the House of Representatives — Elections of 1800 and of 1824 — Changes in the Process of Election — The Inaugural Ceremony — Presidential Term, Salary, and Qualifications — The Vice-President — Election of Vice-President by the Senate — Statutory Presidential Succession.

XXVI. THE PRESIDENT'S POWERS AND DUTIES . . . 296

General Characteristics of the Federal Executive — Classification of Executive Powers — Military Powers of the President — Position as Commander-in-Chief — Duty to enforce the Laws — Protection of the States — Administrative Powers — The Power of Appointment — Officers appointed by Concurrent Action of President and Senate — Appointment of Inferior Officers — The Power of Removal — Term of Federal Officers — The Spoils System — Civil Service Reform — Diplomatic Powers — Appointing and Receiving Representatives — The Power to make Treaties — Legislative Powers — Convening and adjourning

Congress — Power to recommend Legislation — The Presidential Veto — Judicial Powers.

XXVII. THE EXECUTIVE DEPARTMENTS 312

The Federal Executive Departments — The President's Cabinet — The Department of State — Department of the Treasury — Work of the Treasury Department — The Department of War — The Department of Justice — Post-Office Department — Department of the Navy — Department of the Interior — The General Land Office — Other Bureaus of the Interior Department — The Department of Agriculture — Department of Commerce and Labor — Miscellaneous Boards and Commissions.

XXVIII. THE FEDERAL JUDICIARY 327

Necessity of a Federal Judiciary — The National Courts — Federal Judges — Jurisdiction of the Federal Courts — Jurisdiction depending upon Character of Suit — Jurisdiction depending upon Character of Parties — The Federal Judicial System — Federal District Courts — Federal Circuit Courts — Federal Circuit Courts of Appeals — The Federal Supreme Court — Special United States Courts — Exercise of Federal Judicial Power — The Law administered in the Federal Courts — Declaring Legislative Acts Void.

XXIX. EXPENDITURE AND REVENUE 340

Objects of Federal Expenditures — Growth of Government Expenditures — Control of Federal Expenditures — Criticisms of Federal System of Finance — Sources of Federal Revenue — Taxing Power of the National Government — Import Duties as a Source of Revenue — Import Duties as a Form of Tax — General Characteristics of Excise Taxes — History of Excise Taxation — Administration of Excise Taxes — Characteristics of Income Taxes — History of Federal Taxation of Incomes — Direct Taxes levied by the Federal Government — Anticipatory or Extraordinary Revenues — Bond Issues — Short-Time Loans — History of the National Debt.

XXX. COINAGE AND CURRENCY 358

Origin and Functions of Money — Monetary System of the United States — Volume of Money — History of Metallic Currency to 1873 — History of Metallic Currency, 1873-1900 — The Coinage Act of 1878 — The Sherman Act and its Results — Arguments for Bimetallism — Arguments for Monometallism — Currency Act of 1900 — Paper Currency — First United States Bank — Second United States Bank — Constitutionality of a Federal Bank — State Banks — The National Banks — The Independent Treasury System — Government Paper Money — Legal-Tender United States Notes — Resumption of Specie Payments — Constitutionality of Legal-Tender Notes.

XXXI. COMMERCIAL FUNCTIONS	377
Commerce under the Confederation — Commerce under the Constitution — Navigation — River and Harbor Improvements — Tariff Duties — Tariff History of the United States — Arguments for Free Trade or a Revenue Tariff — Arguments for Protection — Immigration — General Characteristics of Immigration — Control of Interstate Commerce — Instruments of Interstate Commerce — Railway Transportation — Interstate Commerce Act — Anti-Trust Act of 1890.	
XXXII. INTERNATIONAL RELATIONS	396
International Law — Federal Control of International Affairs — History of American Foreign Policy — The Struggle for Neutral Rights — Policy of Territorial Expansion — Foreign Affairs during the Civil War — The Monroe Doctrine — Present Position of the United States — Arbitration — Foreign Intercourse — Diplomatic Representatives — Consular Officers and Agents.	
XXXIII. TERRITORIAL FUNCTIONS	407
Territorial Power under the Constitution — Expansion of the National Area — Early History of Northwest Territory — Early Territorial Legislation — Ordinance of 1787 — Later Territorial Legislation — Territories and Possessions on the American Continent — The Government of Alaska — The Panama Canal Zone — Representative Territorial Government — The District of Columbia — Other National Property — Insular Territories or Dependencies — The Territory of Hawaii — Government of Porto Rico — Government of the Philippine Islands — Relation of Territories to the Union — Admission of New States.	
XXXIV. MILITARY FUNCTIONS	424
War Powers of the Federal Government — American Wars — The Declaration of War — Letters of Marque and Reprisal — Captures on Land and Water — Power to raise and support Armies — Officers of the Army — Education of Officers — Militia — The Navy — Education of Officers — Rules for the Government of Land and Naval Forces — Military Pensions.	
XXXV. MISCELLANEOUS POWERS	435
Control of Naturalization — Process of Naturalization — Naturalization of Communities — Effects of Naturalization — Power over Bankruptcy — Proceedings in Bankruptcy — Power over Copyrights — Patents — Trade-Marks — Weights and Measures — Federal Power over Crimes — Counterfeiting — Piracy — Offenses against the Law of Nations — Treason.	
XXXVI. HISTORY AND ORGANIZATION OF POLITICAL PARTIES	445
Importance of Political Parties — Functions of Parties — Origin of Parties — The Federalists (1788-1816) — The Democratic-	

Republican Party (1788-1820) — Reorganization of Parties (1820-1830) — The Democratic Party (1830-1856) — The National Republican or Whig Party (1830-1856) — Second Reorganization of Parties (1852-1860) — Parties since 1860 — Minor Political Parties — Organization of Parties — The Party Machine — Party Responsibility.

XXXVII. NOMINATIONS AND ELECTIONS 455

Methods of Nomination — The Party Primary — Types of Primaries — Local Nominating Conventions — Judicial and District Conventions — State Nominating Conventions — Presidential Nominating Systems — The Call of National Conventions — The Delegates — Procedure in National Conventions — The Nomination of Candidates — Presidential Electors — Direct Primary System — Nomination by Petition — Elections — Qualifications for Voting — Woman's Suffrage — Election Districts and Registration — The Conduct of Elections — Casting and Counting the Ballots.

APPENDIX

A. THE CONSTITUTION OF THE UNITED STATES i

B. AREA, POPULATION, AND ELECTORAL VOTES OF THE STATES, 1910 xvii

C. AREA AND POPULATION OF TERRITORIES AND INSULAR POSSESSIONS xviii

D. ILLUSTRATIVE MATERIAL FOR THE STUDY OF GOVERNMENT xviii

E. SELECTED REFERENCES ON AMERICAN GOVERNMENT . xx

INDEX xxiii

ILLUSTRATIONS FROM PHOTOGRAPHS

The Capitol at Washington	<i>Frontispiece</i>
Road Making. Two Photographs showing the effect of Macadamizing	<i>facing</i> 28
The New City Hall at Chicago	" 44
A Typical New England Town Hall, at Needham, Massachusetts	" 44
The Municipal Building at Des Moines (exterior and interior)	" 45

A View in Central Park, New York City . . .	<i>facing</i>	66
William H. Seward Park, New York City . . .	"	66
A Public Bath for Boys, Boston	"	67
Field House at South Park, Chicago	"	67
Pumping Station at the Chestnut Hill Reservoir, Boston	"	70
A Section of the Stony Brook Conduit, Boston . .	"	70
Two Views of a School-yard in Cleveland Before and After Improvement	"	71
New York State Capitol at Albany	"	100
Ohio State Capitol at Columbus	"	100
Spokane County Court House, Spokane, Washington .	"	116
Cumberland County Court House, Portland, Maine .	"	116
Armory of the State Militia, Medford, Massachusetts .	"	132
Police Protection during a Strike	"	132
Boston City Hospital Relief Station	"	156
A Tenement House Section in New York City . .	"	156
Two Photographs illustrating Forestry	"	160
Minnesota Agricultural Experiment Station . . .	"	161
The Dairy Car of the "Better Farming Special" . .	"	161
The Sault Ste. Marie Canal	"	168
The Queensborough Bridge, New York	"	168
Boston Public Library	"	174
The Soldan High School, St. Louis	"	174
Bird's Eye View of the University of Wisconsin . .	"	175
Three Photographs Illustrating the Centralization plan of Schools	"	178
Public School 165, New York City	"	179
The Grover Cleveland School, Philadelphia . . .	"	179
United States Senate Chamber	"	270
United States Hall of Representatives	"	270
The New Office Building of the United States Senate .	"	282
The Executive Offices	"	282
The Post Office at New York City	"	316
The Post Office at Atlanta, Georgia	"	316
The Library of Congress	"	317
The Patent Office	"	317
The Great Garland Canal on the Shoshone Project, Wyoming	"	323
The Truckee River Irrigating Canal, Nevada . . .	"	323
The State, War, and Navy Departments	"	326
The Supreme Court Chamber	"	326
Panama Canal, Pedro Miguel Lock	"	380
The Ellis Island Immigration Station (exterior and in- terior)	"	388
The Custom House at New York City	"	389
The Custom House at Philadelphia	"	389
The Governor's Palace at San Juan, Porto Rico . .	"	396
International Bureau of the American Republics, at Washington	"	396

ILLUSTRATIONS

xix

The Armored Cruiser "Montana"	<i>facing</i>	434
United States Penitentiary at Leavenworth, Kansas	"	434
The Coliseum, Chicago	"	454
A Political Parade	"	454
The Dial of a Voting Machine	"	455

FACSIMILES, DIAGRAMS, AND MAPS

State Legislative Bill (<i>facsimile</i>)	<i>facing</i>	101
Our System of Law (<i>diagram</i>)		117
A Pennsylvania Injunction (<i>facsimile</i>)		126
Sources of School Revenues (<i>diagram</i>)		182
Expenditures of National, State, and Local Governments (<i>diagram</i>)		188
Amount and Objects of State and Local Expenditures (<i>diagram</i>)		189
Receipts of National, State, and Local Governments (<i>diagram</i>)		190
Sources of State and Local Revenues (<i>diagram</i>)		192
Sources of Revenues of State and Local Governments (<i>diagram</i>)		196
Distribution of General Property Tax among State and Local Governments (<i>diagram</i>)		198
Distribution of Governmental Powers (<i>diagram</i>)		236
The Original Gerrymander (<i>facsimile</i>)		261
Congressional Districts in the State of Alabama (<i>map</i>)		261
Form of a Federal Law (<i>facsimile</i>)	<i>facing</i>	283
A Presidential Proclamation (<i>facsimile</i>)	<i>facing</i>	300
Last Page of Treaty of Paris, 1898 (<i>facsimile</i>)		306
Objects of Federal Expenditures, 1909 (<i>diagram</i>)		341
Federal Revenues and Expenditures, 1860-1908 (<i>diagram</i>)		343
Sources of Federal Revenues, 1909 (<i>diagram</i>)		344
The National Debt, 1860-1908 (<i>diagram</i>)		355
Sources of our Immigration for the years 1882 and 1907 (<i>diagram</i>)		387
Insular Expansion of the United States, 1898 (<i>map</i>)	<i>facing</i>	397
Massachusetts Ballot (<i>facsimile</i>)		469-470
Continental Expansion of the United States since 1783 (<i>map</i>)		

Back Lining Pages.

GOVERNMENT AND POLITICS IN THE UNITED STATES

CHAPTER I

SOME ELEMENTS OF POLITICS

1. **Origin of the State.** Since the very beginning of civilization the tendency of man has been to unite with his kind in some form of association, rather than to live a solitary and independent life.¹ One of the earliest of these groups is the patriarchal family, in which the father rules over his descendants as both king and priest. In other words, early social organization is based upon kinship; individuals related by blood unite in a family group for mutual protection and support. Gradually the family becomes larger and broadens into the clan or *gens* — a group of families claiming descent from a common ancestor, practicing the same religious rites, and ruled over by the chief kinsman. At length a number of clans unite into a tribe whose chieftain is still in theory the chief kinsman. Finally from the union of a number of tribes the ancient state appears, the members of which are united by the triple bond of a common language, a common religion, and real or assumed blood relationship. At the head of the state is the king, sanctified as priest and father of his people.²

2. **Evolution of the State.** The early state was little more

¹ According to the celebrated dictum of Aristotle in his work on Politics: "Man is by nature a political animal."

² This *patriarchal* theory concerning the origin of political institutions was propounded by Sir Henry Maine, and is now accepted by many authorities. But since the actual origin of political institutions antedates history by thousands of years, this explanation must be viewed not as an account of how the state actually did originate, but of how it may reasonably be supposed to have originated.

than a group of migratory tribes which gained a precarious living by hunting, fishing, and herding their flocks. But with the development of agriculture, men became identified with the land which they tilled.

Factors in
develop-
ment

Thus the bonds of kinship and tribal relations were strengthened by the sense of geographical unity, and from that time on, political life was associated with the land on which each community lived. In the development of the state, religion and war were also factors of great importance. Religion served to inculcate reverence and piety among the masses of the people, thereby making possible the supremacy of law; while war resulted in the survival of those early groups which were best adapted to their environment—in short, it gave the land to the strongest nations, to those which could make best use of it. Thus by a gradual evolution from early and imperfect beginnings, we have the complex industrial state of to-day, a product of history and of the gradual and continuous improvement of human society.¹

3. Preliminary Definitions and Distinctions. The modern state is an independent, sovereign political community, organized under some form of government. Independence, sovereignty, organization—these are the essential elements in the conception of the state. Hence a community politically dependent upon another, as Egypt or the Philippines, is not a state. By sovereignty, the second element in the definition of the state, is meant supreme and universal power over all individuals within its borders.² In most modern states the ultimate sovereignty

State

¹ This historical theory as to the origin of the state is now generally accepted by writers on politics. Two other theories regarding the origin of the state formerly prevailed. (1) During antiquity and the Middle Ages, the state was generally viewed as of direct divine creation. (2) In the seventeenth and eighteenth centuries, the prevalent theory was that the state had its origin in a contract or compact among individuals whereby each gave up a part of his own natural liberty in order that all might be protected by the combined strength of all. The chief exponents of this social contract theory were Hobbes, Locke, and Rousseau. It was accepted by Jefferson, Madison, and other early American statesmen, and was embodied in the Declaration of Independence and in the Bills of Rights of the early State constitutions.

² This definition excludes the individual commonwealths comprising our federal Union, since these are not sovereign states. Throughout this volume the word "State" capitalized, will be used to denote one of the members of the Union; and printed without a capital to

is vested in the people themselves. Lastly the state possesses an organization known as its government, which will be presently defined.

The word nation (from the Latin *nascor*, to be born) has reference primarily to the relations of birth and race kinship. Hence the term is sometimes used to denote a body of people belonging to the same race, possessing a common language, common civilization, traditions, and customs. In this sense all Germans, whether living in Germany, Austria, or elsewhere, compose the German nation. A second and more common use of the word nation is to denote a body of people living within a definite territory under an independent government of their own; thus the French nation denotes the people occupying the territory known as France.

Government, a term often used as synonymous with state, should be clearly distinguished from it, since government is merely the instrument or agency created to carry out the ends of the state. Government includes the body of laws and customs through which the will of the state is expressed, as well as the officers whose duty it is to formulate, execute, and interpret those laws and customs.

A government is administered in accordance with a constitution — which may be defined as the fundamental, organic law in which the will of the state is expressed, and by which the form and powers of its government are determined. Constitutions are usually written,¹ as in the case of the United States, Germany, France, and Italy; sometimes unwritten like that of Great Britain. Unwritten constitutions exist in the form of precedents, customs, and rules defining the nature of the government and the scope of its authority.

4. The Forms of the State. Most writers on politics have

denote a sovereign state belonging to the family of nations — as the United States or France.

¹ The first written constitution creating a government was the Fundamental Orders of Connecticut, drafted by the people of Windsor, Hartford, and Wethersfield in 1639.

followed Aristotle's classification of states into monarchies, aristocracies, and democracies, according to the number of those who hold the sovereignty or supreme power.¹ If sovereignty resides in a single individual the state is a monarchy; if in a minority of persons it is an aristocracy; if in the majority, a democracy. This classification is of slight practical value at the present time, since nearly all great modern states are democracies, the supreme power being vested in the people; but many of them have monarchical governments.

History furnishes another classification based upon no general principle into: (1) the city state, of which ancient Greece furnishes many examples. (2) The universal or world state, the institution peculiar to Roman political genius; e. g., the Roman Empire and the empires of Charlemagne and Napoleon I. (3) The feudal state of the Middle Ages, in which numerous territories were loosely bound to the head of the state by feudal ties. (4) The national state, whose boundaries generally include one dominant people. The national state is the special product of Teutonic political genius, and is the form which most modern states have assumed.

5. Classification of Governments. It is possible to classify governments in a number of different ways, according to the principle of classification selected. Thus governments may be classified as: (1) immediate or representative; (2) limited or unlimited; (3) monarchic, aristocratic, or democratic; (4) hereditary or elective; (5) centralized or dual; (6) consolidated or coördinated; (7) presidential or parliamentary.

6. Immediate and Representative Governments. Governments may be distinguished as immediate or representative, according as the state is or is not identified with the government. Most ancient governments were immediate, as

¹ Aristotle also recognized a perverted form of each type. Thus the perverted form of monarchy is the despotism; of aristocracy, the oligarchy; and of democracy, the ochlocracy (mob rule).

is the British government to-day; that is, there is no organization of the state apart from the government, and it is through the government alone that the state acts. In representative governments, such as Germany, France, and the United States, the government is merely representative of the state, the latter being distinct from the government and supreme over it. Hence in these three countries constitutional amendments can be adopted only by the state itself; while in Great Britain the constitution may be changed by the government.

Identity or
non-identity
of state
with
government

7. **Limited and Unlimited Governments.** Governments may be classed as limited or unlimited, according as the constitution does or does not create a sphere of individual liberty upon which government cannot encroach. This does not mean that unlimited governments are necessarily despotic, but simply that they may be. The governments of Great Britain, France, and Russia are all unlimited, since individual rights are not safeguarded through constitutional guaranties which the government cannot alter; yet only one of these governments could be characterized as despotic. Both the United States and Germany have limited governments, the United States having gone further than any other country in the matter of protecting individual liberty.

Extent
of govern-
mental
power

8. **Monarchic, Aristocratic, and Democratic Governments.** Governments are monarchic, aristocratic, or democratic, according as one or the few or the many are made eligible to hold office. Some governments are monarchic as to one branch, democratic as to another. The British government is monarchic as to the executive, aristocratic as to the House of Lords, and democratic as to the House of Commons. On the other hand, the governments of France and the United States are democratic in all branches; that is, practically all adult male citizens are eligible to all offices.

9. **Hereditary and Elective Governments.** Another

principle in accordance with which governments may be classified is the tenure of the chief executive. Under heredi-

Tenure of chief executive tary governments, governmental authority is conferred upon an individual by virtue of his birth.

In most European countries, government is hereditary, the eldest son of the deceased monarch ordinarily succeeding to the throne. In elective governments, the chief executive authority is vested in an individual who is elected to office by those possessing the suffrage. Of this type are the governments of the United States and the American continent generally, as well as France and Switzerland.

10. Centralized and Dual Governments. Governments may also be distinguished as centralized and dual. **Centralized government** centralized government is that form in which governmental powers are vested primarily in a single central organization. No local divisions exist which possess original authority, or powers which cannot be taken away at the will of the central government. Most governments belong to this class, e. g., those of Great Britain, France, Italy, Spain, and Russia.

Under dual government, authority is divided between two governments to a considerable extent mutually independent, **Dual government** neither of which can lawfully encroach upon the sphere of the other. Dual governments are of two kinds, confederate and federal, the former being often a transient form in the development of the latter.

A confederate government is a mere league of sovereign **Confederate type** states, the central government possessing few powers. Historical examples are the Swiss Confederation, the North German Confederation, and the United States under the Articles of Confederation.

These confederations afterwards developed into states with the federal form of government (Switzerland, the **Federal type** German Empire, and the United States). In each of these countries two distinct governmental authorities have been created, each entrusted with certain

functions and in many ways independent of the other. These are: (1) The central or national government, and (2) the governments of the several members of the union, known as cantonal governments in Switzerland, State governments in Germany and the United States.

The division of powers between the national and State governments is one of the distinctive features of the American system. This division is established by the federal constitution, which enumerates the powers of the national government, all others being reserved to the States or to the people. Those interests which concern the United States as a whole, such as foreign relations, national finance, foreign and interstate commerce, are entrusted to the national government; while the individual States regulate those subjects which directly affect the citizen in his daily life, such as local government, education, property and contract rights, and criminal law.

A further distribution of powers exists within each commonwealth between the State government itself, and the various local governments (municipalities, school districts, townships, and counties). This division of powers is partly provided for in the State constitutions, but is chiefly a matter of legislative discretion. For this reason the powers of local governments are subject to frequent change, although generally local authorities are entrusted with the maintenance of public order and the immediate personal care of the people of each community (including such interests as schools, poor relief, street-paving and lighting, water supply).

II. Consolidated and Coördinated Governments. Consolidated government is that type wherein the state entrusts all governmental powers to a single body. Coördinated government is the form in which such powers are distributed among separate departments (legislative, executive, and judicial), each having its own independent existence. France in the days of Louis XIV, Russia until recent

years,¹ are examples of consolidated governments; but co-ordinated government is the form now almost universal among the great states of the world.

In ancient times Aristotle had pointed out that the powers of government naturally fall into three groups, legislative, executive, and judicial. It was reserved for modern writers — especially Locke in England and Montesquieu² in France — to demonstrate that this separation of powers constitutes an all-important guaranty of individual liberty and free government. Montesquieu pointed to the British constitution as furnishing the best illustration of this separation and independence of governmental authorities; and it was the British constitution as thus conceived which furnished the precedent for our American system of separation of powers.³

It is a familiar principle in American jurisprudence that to the legislature is entrusted the making of laws; to the executive their enforcement or administration; and to the judiciary the interpretation of laws, that is, the final decision as to their meaning, application, and constitutionality. Each of these departments is an independent and coördinate branch of the government; and hence it follows that no department may lawfully usurp the functions of the others, or encroach upon their rightful spheres.

Although the three departments of government are distinct and independent, in practice each exercises considerable indirect control over the others. This makes each a “check and balance” upon the others, and enables each department to protect its own sphere from encroachment. For example, only the legislature can raise and

¹ The Russian legislature or *Douma* was called into existence in 1905. In theory at least the consent of this body is necessary to the enactment of laws.

² Montesquieu's great work, *De l'Esprit des Loix* (the Spirit of the Laws), was first published in 1748. His famous discussion of the separation of powers and the check and balance of each upon the others is given in Book XI, ch. VI.

³ The subsequent development of the British government has resulted in the complete subordination of the executive to Parliament; so that the British constitution no longer illustrates the principle of division of powers among coördinate departments.

appropriate money with which to carry on the government, or exercise the power of impeachment; the executive has a limited veto upon measures passed by the legislature; and the courts have the ultimate decision as to the constitutionality of the acts of the other departments.

12. **Presidential and Parliamentary Governments.** Finally, with reference to the relation of the executive to the legislature, governments may be classified as **Presidential** presidential or parliamentary. In presidential **government** government the executive is independent of the legislature. The chief executive is not chosen by the legislature, and that body cannot turn him out of office because of political disagreement. Nor is the executive responsible to the legislature for his administrative policies and acts; he appoints his own cabinet of advisers, who are politically responsible not to the legislature but to him. Moreover he generally has the veto power whereby he may protect the executive sphere against legislative encroachment. Both the United States and the German Empire have presidential governments.

Parliamentary government exists when the legislature is entrusted with the control of the administration. The legislature chooses the real executive (who often is not the nominal one), and terminates the executive term at its own pleasure. Executive powers **Parliamentary government** are exercised by a cabinet of ministers, generally the chiefs of the majority party in the legislature, who are politically responsible to that body alone. Hence whenever this cabinet ceases to have the confidence of the legislature (in practice, of the lower house), the ministers must resign so that others may be chosen. Great Britain, France, Italy, and Austria-Hungary have parliamentary governments.

13. **Characteristics of American Government.** The leading characteristics of American government may now be summarized as follows: (1) American government is *representative*; that is, the government is not supreme but acts for and in behalf of the people, who rule through their represent-

atives. (2) It is *limited*; in both national and State constitutions the rights of the individual are carefully safeguarded against encroachment on the part of other individuals or of government itself. (3) It is *democratic*; eligibility to office is limited only by citizenship, age, residence, and sex. (4) It is *elective*; that is, the governmental officers are chosen by the votes of persons possessing the suffrage. (5) It is *federal*; that is, the state employs two governmental organizations, entrusting to the one general powers pertaining to the interests of the United States as a whole, and to the other, powers to be exercised on behalf of the people of each individual State. (6) It is *coördinated*; that is, the powers of government are distributed among legislative, executive, and judicial departments, each independent but coördinated with the others. (7) It is *presidential*; that is, the chief executive or president is not chosen by the legislature, nor is he responsible to that body for his political acts and policies. Such are the leading characteristics of the government described by a German writer, Von Holst, as "the greatest and freest republic of all time." ¹

14. The Functions of Government. To the question, "What are the functions of government?" no general answer can be given which will be true at all times or in all countries. Widely varying conceptions of what governmental functions ought to be are held by citizens of different states, and by citizens of the same state at different epochs. On the one hand, extreme individualists maintain that government activity should be limited to the protection of life and property, and the enforcement of contracts. Socialists, on the contrary, urge that government should own the land and productive capital, and organize and manage all productive enterprises. Between these two extremes are many shades of opinion. The functions which a particular government undertakes will be determined largely by the popular attitude on the question of government activity; and

¹ *Constitutional Law of the United States*, p. 94.

this popular attitude will itself be moulded largely by the state's history and customs, its economic condition and interests.

Certain activities are so vital to public welfare that all governments undertake them, and these may therefore be called the *essential* functions of government. They are **Essential functions** as follows:—

(1) The maintenance of order and the protection of persons and property. To this end, governments maintain police and militia systems, armies and navies.

(2) The definition and regulation of property rights. This involves the enactment of laws concerning the holding, transmission, and inheritance of property, the determination of liability for taxes, debts, and fines, and the conditions governing the exercise of eminent domain.

(3) The determination of contract rights.

(4) The administration of justice in both civil and criminal cases.¹ This includes the definition of legal rights and of crimes, the maintenance of courts and the enforcement of judicial process.

(5) The fixing of the legal relations between certain classes of individuals, especially between husband and wife, guardian and ward, master and servant, parent and child (the law of domestic relations).

(6) The determination of the political duties, privileges, and relations of citizens, including such matters as citizenship, suffrage, and elections.

(7) The control of the state's international interests, including defense against external attack and the maintenance of diplomatic relations.

There can be little dispute as to the necessity of the above-mentioned functions, since these are the vital purposes to secure which governments are formed. There is greater difference of opinion with respect to the following *optional* functions, most of which are undertaken in greater or less degree by all modern governments:—

(1) The regulation of trade and industry. Under this head are included control of commerce through trade and navigation acts; encouragement of industry by means of tariffs, bounties, and subsidies; regulation of labor, especially through factory legislation;

¹ Civil cases are those in which the individual, through his own action, invokes the aid of the court to secure legal redress; criminal cases are those which government prosecutes and punishes in its own name.

enactment of bankruptcy laws; establishment of standard weights and measures; control of corporations; granting of monopoly privileges, such as franchises, patents, and copyrights; equalization of the terms of competition by establishing maximum freight charges and interest rates.

(2) The establishment and maintenance of useful public works, including postal facilities, coinage of money, consular service, collection of statistics, internal improvements (roads, bridges, canals, river and harbor improvements), electric-lighting plants, and waterworks.¹

(3) Education, involving the establishment and maintenance of schools, libraries, and art galleries.

(4) Sanitation, including the inspection of food products, licensing of certain trades, maintenance of waterworks and sewer systems.

(5) Care of the dependent and defective classes by the erection of asylums for paupers, the insane, and epileptics; also schools for deaf mutes and the blind.

(6) Regulation of forestry, mining, and fisheries.

GENERAL REFERENCES

- Ashley, Roscoe L., *The American Federal State* (1903), ch. i.
 Bagehot, Walter, *Physics and Politics* (1906).
 Black, H. C., *American Constitutional Law* (1897), chs. I-II.
 Bluntschli, J. K., *The Theory of the State* (1901).
 Boynton, F. D., *School Civics* (1904), chs. I-II.
 Burgess, John W., *Political Science and Comparative Constitutional Law* (1902), I, pp. 1-89; II, pp. 1-40.
 Forman, S. E., *Advanced Civics* (1905), chs. I, IV-vi.
 Hinsdale, B. A., *The American Government* (1900), Introduction.
 Jenks, E., *History of Politics* (1900).
 Landon, Judson, *The Constitutional History and Government of the United States* (1905), chs. XVII-XVIII.
 McClain, Emlin, *Constitutional Law in the United States* (1905), ch. i.
 Pollock, Frederick, *Introduction to the History of the Science of Politics* (1900).
 Sidgwick, Henry, *Elements of Politics* (1897).
 Willoughby, W. W., *The Nature of the State* (1896).
 ———, *The Rights and Duties of American Citizenship* (1898), part I.
 Wilson, Woodrow, *The State* (1906), ch. i.
 Woodburn, James A., *The American Republic and its Government* (1903), chs. I-II.

¹ Many European governments also own and operate electric and steam railways, telegraph and express systems.

QUESTIONS AND EXERCISES

1. Explain why government is necessary. Why is the study of government important to every citizen?
2. What are some of the obligations of the individual toward government? Of government toward individuals?
3. Distinguish between the Italian nation, the Italian state, and the Italian government. (Kaye, P. L., *Readings in Civil Government*, pp. 3-9.)
4. Name several nations which have established separate national governments in modern times. (*Cambridge Modern History*, XI; Burgess, John W., *Political Science and Comparative Constitutional Law*, I, pp. 37-39.)
5. Classify the governments of Great Britain, France, and Germany in accordance with the principles in Section 5. (Burgess, John W., *Political Science*, II, pp. 21-40.)
6. Discuss the respective advantages of presidential and of parliamentary governments; of centralized and of dual governments. (Burgess, John W., *Political Science*, II, pp. 12-16.)
7. Prepare a report upon the origin of representative government in the United States. (Kaye, P. L., *Readings*, pp. 26-30.)
8. Explain the meaning of constitutional government. (Kaye, P. L., *Readings*, pp. 9-15.)
9. What are the respective merits and defects of written and of unwritten constitutions?
10. What are the advantages of distributing governmental powers among three separate departments?
11. Which of the optional functions mentioned in Section 14 are performed by our government? Do you think others should be included?

CHAPTER II

ORIGIN OF RURAL LOCAL GOVERNMENT

15. Relation of Local to State Governments. In a country whose government is centralized, the national authority determines the form and attributes of the local governments; and hence in such states as Great Britain, France, and Italy, the system of local government is in large measure uniform in all parts of the country. On the contrary, under a federal government such as exists in the United States, regulation of local government is left to the individual States, each of which decides for itself what local areas and authorities shall exist within its borders.¹ Hence diversity instead of uniformity characterizes local government in this country, the systems established by the various commonwealths agreeing on some points, but differing on many others.

In every commonwealth local government is administered through certain local agencies created by the State legislature, by which body they may be regulated, modified, or even entirely destroyed.² These local divisions have a dual character: they are (1) agencies of the State government, which entrusts them with the local administration of certain public or governmental functions; and (2) they are also organs designed to satisfy local needs and to regulate the internal affairs of particular districts.

¹ In other words, "the American system is one of complete *decentralization*, the primary and vital idea of which is, that local affairs shall be managed by local authorities, and general affairs only by the central authority." — Cooley, Thomas M., *Constitutional Limitations*, p. 261.

² But nearly all State constitutions contain important limitations upon the legislature's power over local areas, as well as provisions designed to guarantee to the localities important rights of local self-government.

16. **Classification of Local Governments.** Local governments may be classified into two groups: (1) rural governments, including the township and county (together with their various subdivisions — school districts, election and road districts); and (2) urban governments, including villages and cities.

Of rural local governments there are three leading types in the United States: (1) the town or township type in the six New England States; (2) the county or county-precinct type in the South, Southwest, and in the Far West; (3) the mixed or compromise type in the Middle, Central, and Northwestern States. These three types are a survival or reproduction of the three forms of local government which prevailed in colonial America; and the variety of types springs from original differences in the character and economic environment of the early settlers.

17. **Origin of Town Government.** Town government is New England's contribution to American local government. But this form of government is much older than New England, older even than the English nation itself, for it was brought from northern Germany by those Teutonic tribes from the union of which the English people has sprung.¹

The old English town, like its prototype the German mark, was surrounded by a hedge or fence (tun), and was originally inhabited by men united by the ties of common speech and religion, and real or assumed kinship. "Harling abode by Harling, and Billing by Billing; and each 'wick' or 'ham' or 'stead' or 'tun' took its name from the kinsmen who dwelt together in it. In this way the home or 'ham' of the Billings was Billingham, and the 'tun' or township of the Harlings was Harlington."² Thus the early town was the home of a clan which had given up a wandering mode of life and settled upon a definite tract of land.

Common ownership and cultivation of the land was the striking feature of the town's economic life. Each family had its dwelling

¹ "If we read the admirable work of Tacitus upon the manners and customs of the Teutons, we shall find that it was from them that the English derived their political system." — Montesquieu, *Esprit des Loix*, book XI, ch. 6.

² Green, John Richard, *History of the English People*, book I, ch. 1.

with a plat of ground, and ownership of this plat carried with it the right to cultivate a certain portion of the communal land, as well as the right of pasture in the undivided land or waste.

**Economic
features**

The government of this community was thoroughly democratic. In the tun-moot or town-meeting, all the freemen assembled to enact by-laws,¹ adjust disputes, and try petty offenses.

Government

Here also the chief officers of the town, the *gerefa* or head-man, the *bydel* or messenger, and the *tithing-man* were elected; and the orders of the higher authorities relative to such matters as taxation and the pursuit of criminals were carried out. Further, the town was the unit of representation for the larger areas of government. Certain villagers were sent to represent it in the assemblies of the hundred and the shire,² thus laying the foundation for the system of representative government which has since become characteristic of English institutions.

18. Historical Development of the English Town. During the Norman period the town was known as the manor, and was dependent upon some feudal lord. At a later period the manor was called the "parish."³

**Manor
and parish**

The local legislature of the parish was the vestry-meeting, which corresponds to the tun-moot of Saxon days. The vestry-meeting elected the parish officers, and had power to levy local taxes and to enact by-laws. The chief officials of the parish were the church-wardens, who served as overseers of the poor and also discharged financial functions; the constable, who acted as an executive officer for the purpose of serving warrants, making arrests, and collecting taxes; the vestry clerk, who was the prototype of the New England town clerk; together with numerous minor officials. In the execution of their duties, parish officers were under the supervision of justices of the peace.

**Parish
government**

It was with the parish system of English local government as it existed in the first part of the seventeenth century that the New England colonists were familiar; but they preferred to call their new communities by the older term "town," using the word "parish" to denote an ecclesiastical area. Different conditions in the new world brought about many modifications, but on the whole the development of

**Influence
upon New
England
institutions**

¹ That is, town-laws: from the Danish *by*, town.

² The hundred was a local division which included a number of townships. The shire (later called the county) was a still larger local area containing a number of hundreds.

³ Originally the parish was an ecclesiastical division for the collection of tithes; but its boundaries ordinarily coincided with those of the town or manor, and from 1580 to 1640, "town" and "parish" were used in England as convertible terms.

American local government is a continuous process from English institutions of the seventeenth century.

19. **Origin of the County.** The county, like the town, is an English institution transplanted to American soil. The English county or shire dates from the Anglo-Saxon invasion of Britain (A.D. 449-600), and in many cases denotes the territory seized by one of the invading tribes. Thus Essex, Middlesex, and Sussex are the districts originally occupied by the West Saxons, Middle Saxons, and South Saxons; and Norfolk and Suffolk mark the lands held by the "North folk" and "South folk," two tribes of the Angles. In the course of time several shires combined to form kingdoms, as Northumbria, Mercia, and Wessex; and finally the ruler of Wessex became king of all England. The various shires then became subordinate parts of the new kingdom, although retaining important powers of local government. In later times new shires were created as convenient administrative districts. Each shire included a number of hundreds and many townships.

Derived
from the
English
shire

The principal officers of the shire were two, the *ealdorman* and the *shire-reeve* or sheriff. The ealdorman was appointed with the king's sanction in the assembly of the nation (*witenagemot*). The office tended to become hereditary, and often the ealdorman was the descendant of the royal family which had governed the shire in the days when it was an independent kingdom. The ealdorman sat in the shire-moot to declare the law of the land, and in time of war led the shire's contingent of fighting men. The shire-reeve or sheriff was appointed by the king to enforce the law and collect the national revenues within the shire. He was also president of the shire-moot.

Shire
officers

Each shire had its general assembly, the shire-moot, which met regularly twice a year. Its sessions were attended by representatives of the townships, and by the great landowners and public officers. The shire-moot was a court for the trial of important cases; and it was also the agency whereby, through the sheriff, the jurisdiction of the national government was enforced. Thus the shire, like its successor the county, was both a self-governing local organism and an administrative agent of the central authority.

The
shire-moot

20. **Later Development of the English Shire.** The great merit of the government of Anglo-Saxon England was the vigor of the local institutions: its chief defect, the weakness of the national authority. The institutional changes in the years following the Norman Conquest consisted

Superseded
by the
county

chiefly in strengthening the national power at the expense of local divisions. The shire became the county and its shire-moot the county court. The sheriff with greatly increased powers remained as the king's representative to execute the decrees of the court and to look after financial affairs; but the ealdorman was supplanted by the lord lieutenant, the king's military representative in the county, in charge of its militia.

21. Establishment of Towns in New England. For a number of reasons the New England colonists settled in small communities known as towns, instead of scattering over larger areas. (1) The first New England colonists were Puritans in religion, and the early settlements were made by church congregations, each headed by its minister. Such a group of people would naturally wish to have their houses near together so that all might worship at the common church. (2) The economic conditions also favored the development of towns. The New England coast is indented by many bays and harbors: the rivers are generally rapid and unfit for navigation: the sterile soil is not adapted to the cultivation of large estates. Hence many of the people settled on small farms, raising little more produce than they themselves needed; while others engaged in commerce and fisheries, which likewise tended to close settlement. (3) Then, too, the Indian tribes were hostile, and it was easier to defend a compact community against sudden attack than a widely scattered population. (4) Finally, the influence of custom and tradition must not be overlooked. Many of the settlers were themselves townsmen; they were influenced by the Teutonic traditions of local government later modified by English practice; and hence on meeting in this country the primitive conditions that existed in the early Teutonic environment, they established local communities remarkably like the ancient German mark.

22. Characteristics of Early New England Towns. The New England town was usually located near the seacoast or on the banks of a river, and was surrounded by a stockade which served as a defense against the

Conditions
favoring
town life

Economic
features

Indians. The term "town" was applied not only to the group of dwellings within the stockade, but included also the outlying rural area which was gradually brought under cultivation as the Indians were pressed back. As in the German mark, ownership of a "house-lot" carried with it the right to cultivate certain outlying fields, and to pasture cattle in the undivided land.¹ Each town had its own church, and its blockhouse for defense against hostile attack.

The government was a pure democracy, the residents coming together in town-meeting for the regulation of local affairs and election of officials. The governmental **Town** functions of the town included maintenance of **government** highways, care of the poor, support of public schools, assessment and collection of taxes, organization of a local militia, election of a representative to the colonial assembly, and even the regulation in minute detail of the private conduct and affairs of the inhabitants.

Such a community was in fact a miniature commonwealth exercising sovereignty over the persons and property within its limits. As the colonial governments were es- **Relation to**
 tablished, they claimed and exercised authority **colonial**
 over the towns, but the latter retained an almost **government**
 complete control over local affairs.² Counties were created chiefly as convenient judicial districts; and although they afterwards acquired other functions, New England counties have always occupied a distinctly subordinate position in local government as compared with the towns.

23. Rise of the Southern County. Economic and social conditions in the Southern colonies were in marked contrast with those existing in New England, and hence institutional

¹ "Vestiges of the old Germanic system of common fields are to be found in almost every ancient town in New England." — Adams, Herbert, *The Germanic Origin of New England Towns*, Johns Hopkins University Studies, I, p. 73.

² "In most of the New England colonies some of the towns were older than the central government; and in Connecticut and Rhode Island the latter was considered more as a federation of towns than as a superior sovereign authority." — Fairlie, John A., *Local Government in Counties, Towns, and Villages*, p. 21.

development was naturally along different lines. (1) The Southern colonists were not Puritans, but Episcopalians: they did not come to America in groups of families from the same neighborhood, but as a multitude of individuals from various classes of society. (2) The Indian tribes at the South were comparatively peaceable, so that it was not necessary for the settlements to be close together for mutual defense. (3) Finally, the economic conditions were such as to favor the scattering of population over a wide area. The soil was very fertile, the rivers slow and navigable, forming harbors far in the interior where English ships could exchange their cargoes of manufactured goods for American tobacco. The warm climate was favorable to African labor; and the system of slavery once introduced spread rapidly. Large plantations were the rule, and a modified form of feudalism was created, authority being vested in the great landowners. The natural result of slavery was to degrade manual labor, thereby preventing the rise of a prosperous middle class; and an insurmountable social distinction separated the plantation owners from the landless settlers. Thus an aristocratic type of society was developed at the South as naturally as a democratic type in New England.

24. Government of the Southern County. As the houses of the planters were miles apart, it was necessary that the local governmental divisions should include a considerable area; and hence county governments modeled after the English county were created. General administration of local affairs was entrusted to a county court, commonly composed of eight justices. Besides exercising judicial powers, these officials supervised the local affairs of the county. Other officers were the sheriff, coroner, and county lieutenant, entrusted with duties similar to those of the corresponding county officers in England. Nominally the governor appointed the justices and other principal officers; but in practice the justices themselves

**Social and
economic
conditions**

**County
court and
officials**

nominated candidates, who were then commissioned by the governor. Thus the county court became a close corporation or self-perpetuating body composed of the leading gentry of the county.

25. The Southern Parish. The English parish was reproduced in the Southern colonies under the same name, but being overshadowed by the county, its functions were of slight importance. To the parish vestry Subordinate position was entrusted the assessment of local rates, appointment of church-wardens, and care of the poor. The vestrymen were at first elected by the people of the parish; but later they obtained the power to fill vacancies in their number, and like the county courts became self-perpetuating bodies. Ultimately the parishes became purely ecclesiastical divisions, the counties remaining the all-important units of local administration.

26. Contrast between New England and Southern Systems. Thus in several respects, the local government of the Southern colonies presents a striking contrast to that of New England. First, it was less democratic. In New England the people in town-meeting managed local affairs and chose their local officials; while at the South the governing authority was vested in the leading planters of each county, who through the governor dictated the appointment of county officers. Second, the Southern county was the unit for local administration as well as for representation in the colonial assemblies; while in New England the town was the unit for both purposes. But the Southern counties were not such important organs of local government as the towns. The New England State has been called a combination of towns; but the Southern State was a political whole whose local divisions possessed little independent life, having been created chiefly for convenience in judicial and financial administration. Two important differences

27. Township-County System of the Middle Colonies. In the Middle Colonies ¹ economic conditions were favorable

¹ New York, New Jersey, Pennsylvania, Delaware, and Maryland.

to either the town or the county system of local government. This region has a rich soil and also fine seaports which invited to commerce. Hence flourishing towns arose with interests quite different from those of the surrounding rural population. Gradually there developed a mixed or compromise type of local government known as the township-county system, which aims at a partition of powers between the town and the county. Thus in political organization, as in geographical position, the Middle Colonies were midway between the town system of New England and the county system of the South. Local government in the Middle Colonies is especially important because of the profound influence which its township-county system was destined to exert upon the local institutions of the Central and Northwestern States.

GENERAL REFERENCES

- Adams, Herbert B., *The Germanic Origin of New England Towns*, Johns Hopkins University Studies (1883), I, no. 2.
- Bryce, James, *The American Commonwealth* (1908), I, ch. XLVIII.
- Channing, Edward, *Town and County Government in the English Colonies of North America*, Johns Hopkins University Studies (1884), II, no. 10.
- Cleveland, F. A., *The Growth of Democracy in the United States* (1898), ch. III.
- Fairlie, John A., *Local Government in Counties, Towns, and Villages* (1906), chs. I-III.
- Fiske, John, *Civil Government in the United States* (1904), chs. II-III.
- Goodnow, F. J., *Comparative Administrative Law* (1903), I, pp. 162-177.
- Green, John R., *History of the English People* (1900), I, book I, ch. I.
- Hart, A. B., *American History told by Contemporaries* (1906), II, ch. XI, nos. 75-79.
- *Practical Essays on American Government* (1893), nos. 6, 7.
- Howard, G. E., *An Introduction to the Local Constitutional History of the United States* (1889).
- Montague, F. A., *The Elements of English Constitutional History* (1894), chs. I-IV.
- Thwaites, R. G., *The Colonies* (1895), pp. 55-58, 192-193.
- Tocqueville, Alexis de, *Democracy in America* (1898), I, ch. 5.
- Wilson, Woodrow, *The State* (1906), secs. 287, 938-951, 1033-1049.

QUESTIONS AND EXERCISES

1. Summarize the advantages and disadvantages of a decentralized system of local government. (Section 15.)
2. Illustrate the dual character of local governments: (a) by giving examples of public or governmental services which they perform; (b) by citing examples of local affairs entrusted to their control.
3. Which of the three systems of local government named in Section 16 prevails in your State?
4. Draw an outline map of your State, and mark with different colors the boundaries of the county in which you live, and also the boundaries of the townships (or towns) within your county.
5. Write a brief history of the county in which you live.
6. Give the area and population of your county.
7. How many counties are there in your State? Name the five counties having the largest population at the latest census. Name the five counties having the largest area.
8. What is the county seat of your county? Is it centrally located? Is it the largest city in the county?
9. Visit your courthouse and other county buildings, note the uses to which they are put, and prepare a class report upon any facts thus learned.
10. Show the antiquity of some features of town government in New England.
11. Look up the meaning of *ham*, *wick*, and *stead*. Think of towns whose names contain these words; also of towns whose names contain the word *ton* or *tun*.
12. Write a brief history of the town (or township) in which you live.
13. What is the area of your town or township? Its population?

CHAPTER III

STRUCTURE AND FUNCTIONS OF RURAL LOCAL GOVERNMENT

28. General Features of New England Towns. In examining the present structure of rural local governments, we shall commence with the New England town,¹ which is the all-important local unit in the six New England States. The town, it must be remembered, is a rural, not an urban community.² New England towns are generally irregular in form, with an area of from twenty to forty square miles. The population averages under 3000. The town is sometimes an agricultural, sometimes a manufacturing community; and not infrequently both industries are carried on, this diversity in industrial life often causing discord in town politics. Communal property rights — the striking feature of the early town's economic life — have been abandoned as unsuited to modern economic conditions; but the chief political characteristic of the ancient town — local self-government through a popular assembly — has been retained.

29. Important Elements in Town Government. The two most important elements in town government are the town-meeting and the board of selectmen. The town-meeting is an assembly of the qualified voters held regularly once a year, usually in the spring.³ Special meetings are called from time to time as occasion demands. The meeting is summoned by a warrant notifying the voters to meet at a certain time and place to transact

¹ Usually called township outside of New England.

² But many towns are at least semi-urban, and others which may be classed as urban (with a population exceeding 8000) have retained their early form of town government instead of incorporating as villages or cities.

³ Except in Connecticut, where the annual meeting generally comes in October.

the business specified in the warrant. Meetings are held in the town hall if there is one, otherwise in some church or schoolhouse. A moderator presides, and the town clerk acts as secretary.

The most important functions possessed by this body are (1) that of local legislation, and (2) of electing the town officials. As a legislative body the town-meeting **Functions** has power to enact by-laws regulating local affairs, including local finance, schools, poor relief, highways, public works and institutions, police, and sanitation. At each annual meeting, the town officers report in detail as to their administration of the town's affairs, and submit estimates of the funds needed for the ensuing year. The town-meeting then discusses the report,¹ determines town policies for the following year, votes taxes for local purposes, and elects the town officers.²

Of the town officers, the most important are the selectmen,³ an executive board of from three to nine members, generally chosen for a term of one year. This **Town officers** board is charged with the general supervision of town affairs under authority conferred by statute or by the town-meeting. Other officers are the clerk, who keeps the town records, issues marriage licenses, and registers vital statistics; the treasurer, collector of taxes, assessors, constables, school committee, highway officers, overseers of the poor, library and cemetery trustees, and many others.

In addition to their local duties, town officers act as agents of the State government for the assessment and collection of State taxes, enforcement of election and health laws, and other important services.

30. **The New England County.** In its origin the New England county was an aggregation of towns for judicial purposes; and although it has since acquired other func-

¹ The most characteristic feature of the town-meeting is the lively and interesting debate, which affords a valuable political training.

² Formerly representatives to the State legislature were chosen in town-meeting, but now they are generally chosen from districts at the regular State election.

³ In Rhode Island known as the town council.

tions, it is still primarily a judicial district in which civil and criminal courts are held, some by county, others by State judges.¹ Of late years the county has gained ground as an administrative unit, although still occupying a subordinate position in local government.

In each county the people elect a sheriff, who is the principal executive officer attached to the court; also a prosecuting attorney, clerk, treasurer, and a board of county commissioners, generally consisting of three members elected at large.² The commissioners have charge of the county buildings (such as courthouses, jails, and in some States, poorhouses). They estimate the amount of taxes needed to defray county expenses, and apportion this amount among the various towns and cities by which it is levied.³ Only in this last respect does the county exercise control over the towns.

31. The Southern County. The Southern county was originally established as a judicial division in which courts were held, and as a financial district for the collection of State taxes. Other functions have been gradually acquired until to-day the Southern county has general charge of most local affairs, including schools, the maintenance of jails and poorhouses, and the construction and repair of bridges and highways.

General administrative authority over county affairs is vested either in a county court or in a small board of commissioners, members of which are chosen by the voters. Other county officers are the assessor, collector, auditor, treasurer, superintendent of education, overseers of roads, superintendent of the poor, clerk, recorder, surrogate; also county judges, a sheriff, coroner, and prosecuting attorney (the last-named officer sometimes acting for a judicial district including several counties). All of

¹ In Rhode Island there are no county officers other than judicial.

² In Connecticut the commissioners are chosen by the State legislature.

³ In New Hampshire and Connecticut the commissioners do not exercise the power of taxation or of making appropriations.

these officers are elected by popular vote, for terms varying from one to four years.

32. **Minor Local Divisions in the South.** Practically all the functions of local government are monopolized by the Southern county.¹ The smaller local divisions have very limited powers, and their officers are generally controlled by county authorities. Townships were established in Virginia, West Virginia, North Carolina, and Alabama by the reconstruction legislation following the Civil War; but they were soon afterwards entirely abolished, or reduced to precincts for the election of constables and justices of the peace. School districts exist in all of the Southern States, but possess slight powers of local taxation or administration.

33. **Township-County System of Local Government.** The westward movement of population in this country has been generally along parallels of latitude. Thus Westward migration. the Southwest has been peopled largely by settlers from the Southern States, who carried with them the county system of local government; while men from New England and the Middle States emigrated to the Middle West and Northwest, and established there the township-county system of local government, also called the mixed or compromise system because it is a compromise between the local institutions of New England and those of the Middle States.

Under this plan the functions of local government are divided between county and township, both units coöperating in the work of administration. The county is relatively less important than at the South, the township less important than in New England. Compromise plan of local government

This form of local government prevails throughout the great group of States extending from New York to Nebraska, which together contain more than half the entire population of the country. The township-county system is therefore the most representative type of local government in the United States.

¹ In Louisiana the division corresponding to the county is called a parish.

34. Origin of the Township in the West. Township government in the Middle West dates from the Ordinance of 1785,¹ providing for the survey and sale of the lands ceded to the federal government by the several States and by certain Indian tribes. In accordance with the plan of survey adopted, the public domain was divided into tracts six miles square, which were designated by the New England name of townships. For purposes of record and sale, each township was divided into thirty-six sections, each containing one square mile or 640 acres, the sections being subdivided into tracts of 160, 80, and 40 acres.

Judged by its economic results, the Ordinance of 1785 is one of the most important administrative measures ever adopted. Its simple and accurate method of survey was of the greatest convenience to settlers and facilitated the rapid peopling of the new territory. The western pioneer could readily and accurately locate his claim or homestead without requiring the services of a surveyor. Furthermore the land was sold at a nominal price to settlers who perfected their titles by residing on and cultivating their homesteads.

35. Development of the Congressional Township. Of almost equal importance were the political effects of the ordinance. The government surveyor had given the name and defined the territorial limits of an area destined to become a political unit. "Manifestly the 'congressional' township, though as such absolutely devoid of organization, is nevertheless a municipal body in embryo requiring but slight encouragement to develop into a living body."²

That encouragement was furnished by another provision of the ordinance. The germ of future civil organization was the requirement that in every township one section of land should be set aside for the support of public schools. This was the sixteenth section, near the center of the township; and by a later act (1848), the thirty-sixth section in the southeast corner was also reserved. All revenue derived from this land by sale or otherwise was to constitute an inalienable fund for school purposes.

When a new State was formed out of this western territory, the county plan of local government was first adopted, since that form is cheaper and better suited to a scattered population. But since in each township land had been reserved for the public schools, it naturally followed that the township was made a body corporate

¹ In 1784 Congress adopted an ordinance drafted by Jefferson, providing a temporary plan of government for the western territory.

² Howard, G. E., *Local Constitutional History of the United States*, p. 140.



ROAD-MAKING

Two views of the same road at Johnson City, Tenn., showing its condition before and after macadamizing.

and politic for school purposes, its inhabitants being authorized to elect school officers and maintain free schools. Since the schoolhouse in the center of the township affords a convenient place for the citizens to vote for State and national officers, the congressional township, already organized for school purposes, next becomes an election district. Then as the population in- **Develop-**
 creases and the volume of public business grows larger, **ment of civil**
 the need is felt for a governmental area smaller than the **township**
 county to look after such matters as the preservation of order, the building of highways, and the care of the poor; and so to the township is entrusted the election of constables, justices of the peace, superintendents of highways, and overseers of the poor. "In this way a vigorous township government tends to grow up about the schoolhouse as a nucleus, somewhat as in early New England it grew up about the church."¹

36. Differentiated Types of Township-County System.

Two forms of this township-county government have developed, the difference in type being partly due to diversity in the **Origin of**
 original population. In the southern tier of the Central **two types**
 States, where the early settlers were largely from the Middle States and the South, the importance of the county has been emphasized; while in the northern tier, where New Englanders formed a larger element among the early inhabitants, the position of the township is more important. These two forms of the compromise plan of local government are sometimes called the county-precinct type and the township-county type, the former emphasizing the position of the county, the latter that of the township.

The first of these types, in which the county is relatively more important, arose in Pennsylvania, and has since been adopted with modifications in Ohio, Indiana, Iowa, Kansas, and Mis- **County-pre-**
 souri. In these States there is no town-meeting nor are **inct type**
 the townships represented on the county board. In general the position of the township is one of strict subordination to county authority.

The second type, where the township is more conspicuous, prevails in New York, New Jersey, Michigan, Illinois,² Wisconsin, Nebraska, Minnesota, and the Dakotas. In all these **Township-**
 States the town-meeting exists, while five of them — **county type**
 New York, New Jersey, Michigan, Illinois, and Wisconsin — follow the so-called New York plan whereby the townships are represented on the county board.

¹ Fiske, John, *Civil Government in the United States*, p. 87.

² Except in seventeen counties in the southern part of the State, which have no township organization.

37. The Town-Meeting in the Central States. In the second group of States named above (where the township has been more highly developed as a local organism), the town-meeting is the center of local political life, although its authority is less than in New England. In this meeting all qualified voters of the township are entitled to participate. The annual session is generally held in March or April, special meetings being called by warrant as occasion requires. The meeting organizes by electing a moderator,¹ the town clerk generally acting as secretary.

At the annual meeting, the next business after organization is the election of township officers for the ensuing year. The officers are chosen by ballot, and generally consist of a supervisor, clerk, treasurer, assessor, and overseers of highways, all elected for one year; and two or more constables and justices of the peace, elected for terms varying from two to five years.

Besides its power to elect local officers, the town-meeting has important legislative powers. Numerous matters that are local in character, affecting only the township, are subject to the control of the people in town-meeting. They may make orders concerning the disposition of township property; authorize taxes for roads, bridges, schools, or other lawful purposes; vote to institute or defend suits at law; receive the annual report of township officers charged with the disbursement of money, and direct these officers in the performance of their duties; and generally may enact such by-laws as are deemed conducive to the peace, welfare, and good order of the township.

38. The Supervisor and the Township Board. In New England general executive authority concerning township affairs is lodged in the selectmen. In a number of the Central States similar authority is vested in a township board;² while in others a double head-

¹ In New York, Michigan, and Wisconsin, one of the township officers is *ex officio* chairman.

² As in Pennsylvania, Ohio, Iowa, Minnesota, and the Dakotas.

ship exists, administrative authority being divided between the township board and a supervisor or trustee.¹

The supervisor or trustee has general charge of the township business. He receives and pays out all funds belonging to the township, makes an annual report upon financial affairs to the town-meeting, serves in some States as *ex officio* overseer of the poor, and has other clerical and executive duties.²

Township
supervisor
or trustee

The township board is variously constituted in the different States.³ The powers of this board vary greatly, but its primary duty is to audit the accounts of the township officers, and pass upon all claims against the township. Other important duties are often performed, especially in the States in which there is no single head officer of the township.

The
township
board

39. Other Township Officers. The clerk is custodian of the township's records, books, and papers, besides acting as secretary of the town-meeting, and as clerk of the township board. The treasurer has charge of the township funds, and frequently is also *ex officio* collector of taxes for State and county as well as township purposes. Usually all taxes, State as well as local, are assessed by the township assessor; and this officer is also required in some commonwealths to take an annual census of the inhabitants of his district, and to keep a record of births and deaths. All these officers are elected by the voters of the township.

Clerk,
treasurer,
and
assessor

Poor relief is for the most part a county function in the Central States, although the townships commonly coöperate in the work.⁴ Generally the township trustees act *ex officio* as overseers, their duties being mainly confined to granting temporary relief or deciding what persons are entitled to admission to the county almshouse.

Overseers
of the poor

¹ This plan prevails in New York, Missouri, Kansas, Wisconsin, Michigan, Illinois, and Nebraska.

² In those commonwealths which have adopted the New York plan whereby the townships are represented on the county board, he is a member of that board and hence also a county officer.

³ In New York, Michigan, Illinois, and Nebraska, it consists of the supervisor, clerk, and the justices of the peace; in Pennsylvania, of two or more supervisors; in Ohio and Iowa, of three trustees; in Minnesota, Wisconsin, and the Dakotas, of three supervisors; in Indiana, of three freeholders specially elected for this purpose.

⁴ In Pennsylvania, New York, and New Jersey, overseers of the poor are elected in the townships and have important duties.

Overseers of the highways are generally elected or appointed from subdivisions of the county known as road districts. These officers are charged with the maintenance of the highways, and are accountable to the township or county board.¹

Each township elects from two to five justices of the peace, and usually two constables. The justice is both a conservator of the peace and a magistrate with limited civil and criminal jurisdiction. The constable is the local peace officer, and the ministerial officer of the justices' court.

40. The School District. School districts in the Central States are local corporations distinct from the township; but they generally correspond in area with the township or else are subdivisions thereof. In about half of the Central States, the voters in each school district hold meetings, similar to the New England town-meetings, for the purpose of electing school officers and levying taxes for school purposes. The officers or trustees in charge of district schools are generally three in number, elected for terms varying from one to four years. Where there are no school-meetings of the voters, these officers have full control; while in States having such meetings, the trustees carry out the policies adopted and manage the details of school affairs.

41. Organization of County Board in the Central States. After Ohio was admitted to the Union (1803), her county officers were made elective; and to the officials formerly appointed² were added a surveyor, auditor, prosecuting attorney, assessor, and a board of three elective commissioners. In this board was vested the general administrative authority formerly exercised by the justices in quarter sessions. Upon attaining statehood, Indiana and Illinois adopted a similar type of county government with elective officers and a board of commissioners.

In Michigan a different type of county government developed. In 1827 the small board of county commissioners

¹ In Michigan, Indiana, and Illinois, a commissioner of highways is chosen for the general supervision of the roads and bridges of the township, and the district overseers are accountable to him.

² These were the sheriff, coroner, treasurer, recorder of deeds, judges of probate and of common pleas court, and justices of the peace.

was abolished, and the New York system adopted, in accordance with which the county board is composed of the township supervisors.¹

Supervisor
system

The constitution of the county board largely determines the character of county government, and we have now traced the origin in the Middle West of the two general types of county organization. One group of States, following the example of Pennsylvania and Ohio, have organized the county upon the commissioner plan,² under which the supervising authority is centralized in a small board of from three to seven members; another and smaller group, following New York and Michigan, have adopted the supervisor system,³ whereby similar powers are vested in a larger assembly of township representatives.⁴

Comparison
of the two
types

42. Functions of the County Board. The authority of the county board varies, being greatest in those commonwealths having the Pennsylvania plan, and least in those where the New York system prevails. But in all the Central States it possesses considerable powers. The most important may be grouped under five heads.

(1) The erection and maintenance of public works, such as the courthouse, jail, and other county buildings, the construction of bridges, and some control over highways.

(2) Poor relief, including the issuing of warrants for expenses incurred by local overseers, employment of a county physician and a superintendent of the poor, and maintenance of a poor-farm.

(3) The administration of finance and taxation, including the audit of accounts of county officers, levy of county taxes,⁵ and equalization of township assessments.

(4) A limited degree of supervision over elective county officers,

¹ Michigan was the first State west of the Alleghenies to adopt the New York plan.

² The commissioner plan prevails in Pennsylvania, Ohio, Delaware, Maryland, Indiana, Iowa, Minnesota, North Dakota, South Dakota, Kansas, and Nebraska.

³ The supervisor plan prevails in New York, New Jersey, Michigan, Wisconsin, and throughout the greater part of Illinois.

⁴ In rural counties, boards of supervisors usually consist of from fifteen to twenty-five members; in counties containing cities the number is higher, sometimes reaching fifty.

⁵ The taxing power is usually limited to authorized purposes and restricted by a maximum rate. The principal items of county expenditure are for courts, roads and bridges, and poor relief.

such as approval of their bonds and examination of their accounts.

(5) Certain duties in regard to elections, including the establishment of polling-places, issuing of ballots, and canvass of election returns.

43. The County's Judicial Officers. In many States, each county elects a judge, often called a probate judge, who has **County and county-chosen judges** original and exclusive jurisdiction in matters of probate, administration, and guardianship. Frequently the voters of the county elect judges for a court of general jurisdiction; but generally judges of these courts are chosen from districts which include several counties.

The chief executive officer of the county court is the sheriff, who is also the general conservator of law and order **The sheriff** within the county. In case of need, the sheriff has the right to call upon citizens to aid him in enforcing the law (that is, may summon the *posse comitatus*); or if the emergency warrants, he may ask the governor to send the State militia to the county. The sheriff is chosen by the voters,¹ commonly for a term of two years.

The prosecuting attorney ² is the officer elected to conduct criminal prosecutions, also to represent the county in civil suits, and in general to act as its legal adviser. **Prosecuting attorney and coroner** Another elective official is the coroner,³ who with the aid of a jury investigates the cause of mysterious or violent deaths.

44. Financial and other County Officers. The treasurer is custodian of the county funds, and generally *ex officio* collector of county and State taxes. **Treasurer** The money thus collected is placed in different funds, as the general fund, school fund, and so forth. The treasurer is commonly elected by the voters. Two years is the usual term, and the State constitution frequently provides that no person shall serve for more than four years in succession.

¹ Except in Rhode Island, where this officer is chosen annually by the general assembly.

² Also known as State's attorney, district attorney, county attorney or solicitor.

³ In Massachusetts an appointive officer, the medical examiner.

The most important administrative officer is the county clerk, or auditor as he is known in some States. He is secretary of the county board and custodian of all records; and he acts as a check upon the county treasurer, keeping an account of all receipts and expenditures, and countersigning warrants drawn upon the treasurer. In several commonwealths he also acts as clerk of the courts, while elsewhere a special officer is chosen for this duty.

County
clerk
or auditor

Taxes are generally assessed by precinct or township officers and equalized by some county authority; but a county assessor is elected in a number of States.¹

Other county officers are the recorder or register of deeds; the clerk of the district or circuit court; the county land surveyor; county boards of health; and (in some States) a county superintendent of schools, who is entrusted with the general oversight of the county school system.

Other
county
officers

45. Local Government in the Western States. In the States of the Far West as in the South, the county is the all-important unit of local government. Western county officers correspond in general to those of the Central States. The county boards usually consist of three commissioners, who have general administrative authority, including power to establish school and road districts.

The
Western
county

Within the county's subdivisions — generally called precincts, one or more justices of the peace and constables are chosen by the voters. Owing to the sparse and scattered population throughout most of this region, these areas perform few functions as compared with the townships of the Central States.

Minor
areas

¹ Including Missouri, Washington, California, Oregon, Nevada, Colorado, Wyoming, and the Dakotas.

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1902), ch. xx.
 Beard, C. A., *American Government and Politics* (1910), ch. xxix.
 ——— *Readings in American Government and Politics* (1910), ch. xxix.
 Bryce, James, *The American Commonwealth* (1908), I, chs. XLVIII–XLIX.
 Cooley, Thomas M., *Constitutional Limitations* (7th ed., 1903), ch. VIII.
 Fairlie, John A., *Local Government in Counties, Towns, and Villages* (1906), chs. IV–XVI.
 Fiske, John, *Civil Government in the United States* (1904), ch. IV.
 Forman, S. E., *Advanced Civics* (1905), chs. XXVI–XXVIII.
 Goodnow, F. J., *Comparative Administrative Law* (1903), pp. 178–192.
 Hart, A. B., *Actual Government* (1903), ch. x.
 Hinsdale, B. A., *The American Government* (1900), ch. LV.
 Howard, G. E., *An Introduction to the Local Constitutional History of the United States* (1889).
 Monographs on Local Government—Johns Hopkins University Studies, Series I, nos. 3, 5, 6, 12 (Illinois, Michigan, Maryland, South Carolina); II, no. 7 (Iowa); III, nos. 2–3 (Virginia); IV, nos. 2–3 (Rhode Island); VIII, no. 3 (Wisconsin); XI, nos. 11–12 (South Carolina); XII, no. 3 (North Carolina).
 Wilson, Woodrow, *The State* (1906), secs. 1209–1259.

QUESTIONS AND EXERCISES

(Questions 1–8 are for pupils living in New England.)

1. How many towns in your State? What is the population of the largest? Of the smallest?
2. Does town government in New England tend to decrease in importance?
3. How many representatives has your town in the legislature? Has this apportionment been made in accordance with the population of the town?
4. Prepare an account of your town-meeting, discussing the following topics: (a) how composed; (b) method of calling same; (c) how conducted; (d) functions, including election of town officers, making of appropriations, enactment of by-laws.
5. Organize the class into a town-meeting, and discuss live local questions in accordance with articles in a warrant.
6. Describe the board of selectmen of your town, giving their names, term, and functions.
7. Give the same facts concerning the other executive officers of your town.
8. What local courts exist in your town, or in districts including several towns? What cases do they try?

(Questions 9–15 are for pupils living in the Central, and Middle-Western States.)

9. How many townships in your county? Name them.
10. Does the system of local government in your State belong to the county-precinct type, or to the township-county type? (Section 36.)
11. If there is a township board, give the number of members, term, and functions.

FUNCTIONS OF RURAL LOCAL GOVERNMENT 37

12. If supervisory authority is vested in a single officer, give his title, term, and powers.
13. If there is a town-meeting, answer question 4, above.
14. Give the names, term, and functions of other township officers.
15. How are justices of the peace chosen? What cases are tried before them?

(Questions 16-17 are for pupils in the South and Far West.)

16. What is the name of the subdivision of the county corresponding to the township in the Central States?
17. Give the names, method of selection, and functions of the officers chosen within this area.

(The remaining questions are for pupils in all sections.)

18. Which of the following public or governmental functions are performed by your county? (a) Administration of justice; (b) collection of State taxes; (c) holding of State elections; (d) probating of wills; (e) recording of land titles.
19. Which of the following functions pertaining to local needs are performed by your county? (a) Levy and collection of local taxes; (b) administration or supervision of schools; (c) construction and maintenance of local public works; (d) administration of charities and corrections; (e) holding of local elections; (f) enactment of local police regulations.
20. Prepare an outline showing all the functions performed (a) by your town or township; (b) by your county.
21. Are your roads laid out and maintained by the county or township? What was expended for this purpose last year? Are they well improved and cared for? Should the State aid in road-making?
22. Does your county elect a county judge? Or is this officer chosen by a judicial district including several counties?
23. For what term is the county judge chosen? What cases does he try?
24. Is there a probate judge in addition to the county judge? Over what matters has he jurisdiction?
25. Who is the sheriff of your county? How chosen? Term? Authority?
26. Other judicial officers of the county generally include a coroner, prosecuting attorney, and clerk of the court. Give the names, method of selection, term, salary, and duties of each.
27. Legislative authority in county affairs is commonly exercised by a county board. Does your board belong to the Pennsylvania type or to the New York type? (Section 41.)
28. How many members compose your county board? How are they chosen, and for what term? Describe their powers.
29. Give the method of choosing, term, and duties of each of the following officers (if found in your county): clerk or auditor, treasurer, recorder or register of deeds, surveyor, assessor.
30. Give the same details concerning any other officers in your county not included in this list.
31. Are your county officers paid by fees or salaries? By whom is their remuneration determined? Which are the most lucrative offices?
32. Are the representatives in your State legislature apportioned by counties?

CHAPTER IV

MUNICIPAL DEVELOPMENT

46. Definition of City. If we analyze our conception of the term city, we shall find that it includes at least three essential elements: (1) a considerable number of people, who (2) occupy a definite and compact territory, and (3) possess a local government organized with especial reference to their social and economic condition. Hence a city may be defined as “a populous community inhabiting a definite, compactly built locality, and having an organized public authority.” ¹

Like rural local governments, the city has a dual character, being an agent of the State government as well as an organ for the satisfaction of local needs. Thus in its public or governmental character the municipal corporation represents the State, which entrusts it with the performance in a particular locality of certain governmental functions — such as local taxation, the administration of justice and of the schools, the control of elections and of the public health, and the support of the poor. On the other hand, in its private or proprietary character the municipality is an organ for the satisfaction of local needs, such as the construction of sewers, paving, cleaning, and lighting of streets, supplying water, administration of parks, regulation of municipal transportation — matters which interest the commonwealth only indirectly, but which are of vital local concern.

47. Origin of Cities. Economic causes create cities and make urban life possible. So long as agriculture is the sole occupation of a people, cities cannot develop, since this industry necessitates a scattered population.

¹ Fairlie, John A., *Municipal Administration*, VII.

But with the creation of a surplus food-supply, men develop other and higher wants than the mere subsistence wants satisfied by agriculture. Division of labor then occurs, and commerce and manufactures arise — industries which tend to bring people together in compact communities. Thus the existence of cities is the result and sign of a separation of occupations. It is also an indication of economic progress. Countries in the forefront of modern civilization have a large urban population, while the contrary is true of more backward nations.

48. Development of Cities. Just as cities owe their origin to the economic fact of a surplus food supply, so to economic factors is due the great development of cities in modern times. Three of the most important are: **Economic factors**

(1) the industrial revolution, inaugurating the factory system of modern industry with its irresistible tendency to mass population in large centers; (2) extensive improvements in agriculture, displacing rural laborers, who seek employment in the cities; (3) a marvelous development of transportation which has made possible an unprecedented interchange of products.

In the United States the growth in urban population has been most striking. In 1790 about one thirty-third of the people lived in cities; at the present time about **Urban population in the United States** one third. In 1790 there were six cities with over 8000 population; in 1900 there were 546 such cities. Since 1790 the total population of the United States has increased from 4,000,000 to 91,972,267: the urban population from 132,000 to more than 30,000,000.

49. English Origin of American Municipal Institutions. Just as the English system of rural local government furnished the pattern for the system first established in America, so **Influence of English system** the English municipal borough of the seventeenth century was the prototype of the early American city. Both the organization of the English borough and the theory of English law as to the relation of the borough to the central government have profoundly affected American municipal develop-

ment; and hence the nature of the American city will be better understood if we know the leading characteristics of the type from which it has developed.

50. History of the English Municipal Borough. As early as the fifteenth century some of the English towns, which in Saxon days had been governed by the town-meeting, secured from the crown, either by purchase or pledge of an annual contribution, certain special privileges of local government. The document defining these privileges was known as the municipal charter, the granting of which was then, as now, a prerogative of the crown.

The members of the trades guilds were usually named in these early charters as the governing body of the community. At first the municipal corporations were probably fairly representative of the people of the towns; but as time passed by, grave abuses crept in. Membership in the corporation became confined to a few men who had power to designate their successors, and the great majority of the inhabitants had no voice whatever in the local government.

Municipal Reform Act of 1835 Thus the boroughs were close or self-perpetuating corporations, and continued such until Parliament passed the famous Municipal Corporations Act of 1835. By this act the government of the boroughs was reformed and placed in the hands of the citizens.

51. Characteristics of British Municipal Government. Complete subordination of the municipality to the central government is a prominent feature of British municipal administration. In marked contrast to the city-states of the ancient world, which were local communities with sovereign governmental powers, is the British municipal borough created by, and entirely subject to, the central government or Parliament.

Furthermore the British Parliament has usually been very tenacious of its authority, and has consequently granted the cities comparatively limited powers, to be exceeded only by its own permission granted in special acts. From early times the theory has prevailed that so far as public powers are concerned, municipal corporations are merely the delegates of Parliament, which is the ultimate source of all governmental power. Hence it has followed that the powers granted by Parliament to municipalities have been carefully limited and minutely specified.¹

¹ Thus the British cities, unlike those of continental Europe, are and have always been authorities of enumerated rather than of general powers.

From early times to the present, the central fact in the government of the British municipality has been the council. By the provisions of the Municipal Code of 1882, the council consists of the mayor, aldermen, and councilors. The municipality acts through its council, the body which exercises all powers vested in the corporation.

52. American Municipal History. Turning now to the American municipality, we may divide its history for convenience of treatment into five periods: (1) 1641-1775; (2) 1775-1825; (3) 1825-1850; (4) 1850-1875; (5) 1875 to the present time.

53. Colonial Cities. Twenty cities received charters during the period of colonial history from 1641 to 1775. The oldest American city is New York, which received its first charter in 1686. Trenton in 1746 received the last charter granted in colonial times. As in Great Britain charters were granted by the executive, so following this practice the colonial charters were granted by the governors.

The form of municipal organization closely resembled that of the contemporary English borough. Practically the entire authority was vested in a council, which consisted of the mayor, recorder, aldermen, and councilmen, acting as a single body. The mayor was sometimes appointed by the governor, sometimes elected as in England by the council. His functions were to preside at meetings of the council and to execute the ordinances passed by that body. The administrative authority of the council was limited chiefly to matters of local concern, the public or governmental side of the corporation's life being then but little developed.

In two important respects American colonial cities differed from the English boroughs of that period. (1) In America close corporations were the exception. In only three cities¹ were the councils self-perpetuating bodies, elsewhere control of the city being in the hands of its residents. (2) The mayor was not as in England a dignified figure-head, but from the first possessed a considerable control over municipal affairs.

54. Relation of Cities to State Governments. The theory of the English law as to the complete subordination of the city to the central government was closely followed. Under the American system, the municipality is regarded as a creature of the State legislature, and in the absence of constitutional restrictions, the legislature may deal with the city as

¹ These were Philadelphia, Annapolis, and Norfolk; but this undemocratic government did not survive the Revolution.

it pleases. It may enlarge or contract its powers, change its framework of government, or even entirely destroy its existence.¹

Furthermore, in passing upon the question of municipal powers, American courts have accepted the rule of the English common law, that grants of municipal power (like all grants of corporate powers) are to be construed strictly, doubtful questions of authority being resolved against the municipality.²

55. Second Period of American Municipal History. During the years from 1775 to 1820, two features of municipal development are especially important.

(1) The practice of conferring charters by the executive gave way to the present method of granting them by the State legislature. Hence the theory that the charter is merely a statute conveying no irrevocable grant to the city; for as a legislative measure it is liable to be altered or repealed by subsequent acts.³

(2) The subordination of municipal affairs to the issues of State and national politics was noticeable; and this tendency, involving also the spoils system as a principle of office-holding, has since become a characteristic feature of our municipal government.

56. Third Period — 1825–1850. Among the characteristics of municipal history during the third period are the following:—

(1) A large number of new cities arose, forty of the cities whose population is now over 30,000 having been first chartered during this period.

(2) The present method of choosing the mayor by popular vote was introduced, supplanting the former methods of State appointment or council election.

(3) Manhood suffrage became universal, superseding the property qualifications prescribed by some of the early charters.

(4) Several cities, including Boston, New York, and St. Louis, adopted the two-chamber plan for the organization of their councils.

57. Fourth Period — 1850–1875. An important development during this period was the great increase of municipal functions owing to the rapid expansion of urban population. During these

¹ The legal theory as to the position of the municipality is clearly stated in *United States v. The Baltimore and Ohio R. R. Co.*, 17 Wallace, 322.

² Dillon, J. F., *Municipal Corporations*, I, p. 115.

³ On the other hand, the early charters granted by the governor were regarded as in the nature of a contract between the executive and the municipality, and hence not subject to amendment except with the consent of both parties.

years our modern system of paid police and firemen replaced the earlier volunteer system; and the construction of waterworks, sewer systems, and establishment of city parks were added to the list of municipal activities. Functions which had been carried on formerly, such as maintenance of schools, street-paving, and poor relief, expanded in importance, resulting in a large increase in municipal taxation and indebtedness.

The unwillingness of the State legislatures to grant large powers to cities, together with the legal doctrine of strict construction of municipal powers, made it necessary for the cities to apply frequently to the legislature for special acts granting additional powers. Especially was this necessary in order to secure additional financial powers. By virtue of these special acts the State legislatures rather than the municipal council determined the local policy of municipalities.¹

Owing to the establishment during this period of street-railway systems and the extension of gas-lighting, the power of councils to enter into contracts conferring valuable privileges, that is, to grant franchises, became very important. In making such grants, councils were commonly heedless of the interests of the cities, and were often corruptly influenced by the corporations desiring the privilege. Franchises were ordinarily conferred without any compensation to the city for the use of the streets, and sometimes without any limitation as to the duration of the grant.

58. Changes in Municipal Organization during Fourth Period. Another important characteristic of the period from 1850 to 1875 is the decline of the city council, which in earlier times had been the central fact in city government. Partly as a result of dissatisfaction with council management, that body lost many of its former legislative and financial powers. Furthermore, the council lost its former power to appoint the various city officials, and these were chosen by popular vote, a change partly due to the democratic spirit characteristic of this period.

Many of the powers formerly exercised by the council were entrusted to elective municipal boards, such as park, library, and waterworks boards. Such officials as the city solicitor, civil engineer, and superintendent of public works were commonly elected by popular vote.

¹ In order to check the growing volume of special municipal legislation, a number of States, including Ohio, Virginia, Iowa, Kansas, Florida, Nebraska, and Arkansas, adopted constitu-

Many commonwealths established State boards or commissions, generally appointed by the governor, to control municipal affairs.

State appointed boards Thus a State park board was created for New York City, a State commission to build Philadelphia's city hall, and State police boards in New York, Baltimore, Detroit, and other cities. The pretext for such action was the mismanagement on the part of the local authorities; but the transfer of municipal functions to boards in no way responsible to local taxpayers generally proved even more unsatisfactory.

59. Recent Municipal History, 1875 to the Present Time.

The volume of special municipal legislation, large during the preceding period, has increased so greatly as seriously to impair local self-government on the part of urban residents.¹ The objections to such special municipal legislation are: (1) the members of the State legislature do not have adequate knowledge of the needs of the particular city for which the special law is designed; (2) the consideration of innumerable local bills detracts greatly from the time and attention needed for general legislation; (3) these special laws are frequently passed from partisan motives and without regard for the true welfare of the city; (4) in exercising powers properly local in character, the State legislature is not directly responsible to the voters of the city, and hence this legislation is irresponsible legislation; (5) special legislation destroys home rule by permitting the legislature to regulate many details of city administration which are of purely local concern.

Recognizing the evils of excessive legislative intervention in local affairs, many States have adopted constitutional provisions designed to safeguard certain rights of local self-government. Thus twenty-three commonwealths have adopted constitutional limitations forbidding their legislatures to pass special acts concern-

Constitutional limitations tional limitations designed to prevent special legislation; but these prohibitions were commonly evaded.

¹ Thus in Wisconsin, at the legislative session of 1885, five hundred special municipal acts were passed, filling 1342 pages of print; while all other acts of that year fill but 600 pages. In the six years from 1884 to 1889, New York passed 1284 acts relating to thirty cities of that commonwealth. In the seventeen years from 1876 to 1892, Ohio passed 1202 special acts affecting cities, of which 1124 conferred special financial powers.



(By courtesy of the Noel Construction Company)

THE NEW CITY HALL AT CHICAGO, ILLINOIS



A TYPICAL NEW ENGLAND TOWN HALL

At Needham, Mass.



(By courtesy of the Superintendent of Public Improvements)

THE MUNICIPAL BUILDING AT DES MOINES, IOWA

Now in process of construction.



INTERIOR OF THE DES MOINES MUNICIPAL BUILDING

Practically the entire business of the city will be transacted in this one large counting-room. Here are the offices of all the various departments of the city government, except those of the police and the fire department, which by their nature require separate quarters.

ing cities. These restrictions have been frequently evaded in States whose courts have held that an act is not special provided it applies to a class of cities, even though the "class" includes but one city.

A second method of limiting the power of State legislatures over cities is that followed in New York. In this commonwealth all measures referring to a single city, **New York** or to less than all cities of a class, after being **plan** passed by the legislature must be referred to the municipal authorities for approval. In cities of the first class (over 175,000 inhabitants), such a measure must be approved by the mayor; and in cities of the other two classes by the mayor and council. If approved by the proper municipal authority, the bill is sent to the governor for his approval or veto; but if disapproved by the local authority, it goes back to the legislative house where it originated, and does not become law unless repassed by the ordinary majority in each house.

A third method of securing municipal home rule is followed in eight commonwealths — California, Colorado, Michigan, Minnesota, Missouri, Oregon, Oklahoma, and **Charter-framing power** Washington. These States have adopted constitutional provisions allowing some of their cities to frame and amend their own charters, provided such charters and amendments are consistent with the constitution and general laws of the State.

60. Changes in Municipal Organization. Two marked changes in the organization of city government during this period are: (1) the return to a single-chamber **Council and mayor** council in a number of cities which had become dissatisfied with the two-chamber system; and (2) the effort to create a responsible mayor by giving that official a larger control over city administration.

61. The Commission Plan. Perhaps the most serious defect in the government of our cities is the absence **Galveston system** of direct responsibility for the management of affairs. Executive and administrative functions are distrib-

uted among numerous boards and officials in such a way that it is almost impossible to locate responsibility. To correct this condition, several cities¹ have recently adopted the commission plan of government, which aims to secure definite responsibility by centralizing municipal powers in the hands of a few men. Thus the Galveston charter entrusts the entire city administration to five commissioners elected at large for a term of two years, one of whom is given the title of mayor-president. Each of the other four is placed at the head of one of the departments of municipal administration — namely, finance and revenue, water-works and sewerage, police and fire protection, streets and public property; while the mayor-president exercises a general coördinating influence over all four departments. The commission acting as a whole is empowered to pass municipal ordinances, vote appropriations, award contracts, and make important appointments (minor ones being made for each department by the commissioner in charge).

The commission system of government also prevails in Des Moines, Iowa, but with important restrictions designed to assure popular control. Thus the Des Moines plan provides for the initiative, referendum, and recall; establishes a merit system for city employees; and requires a popular referendum on all franchise grants.²

¹ The following cities now have some form of commission government. Massachusetts: Haverhill, Gloucester, Chelsea, Lynn. Texas: Beaumont, Dallas, Denison, El Paso, Fort Worth, Houston, Galveston, Austin, Waco, Marshall, Palestine, Corpus Christi. Iowa: Des Moines, Cedar Rapids, Burlington, Keokuk. Tennessee: Greenville, Memphis. Kansas: Hutchinson, Independence, Kansas City, Leavenworth, Topeka, Wichita. Idaho: Boise City, Lewiston. Oklahoma: Ardmore, Tulsa. North Dakota: Minot, Mandan, Bismarck. California: San Diego, Berkeley. South Dakota: Sioux Falls. Colorado: Colorado Springs.

² The advantages claimed for the commission plan are (1) definite location of responsibility resulting from the complete centralization of municipal powers; (2) lessening of civic corruption; (3) approximating the government of the city to that of a business corporation in which ample powers are generally entrusted to a small board of directors; (4) greater promptness and efficiency in action owing to the small number of administrative officers. Those opposed to the commission plan urge (1) that it is undemocratic and un-American, virtually amounting to a receivership for the municipality in which it exists; (2) it narrows the educative work of local government by decreasing the participation of citizens in public affairs; (3) it increases the influence of party organizations by enabling them to concentrate their efforts upon the few elective commissioners; (4) it places the appropriating and spending power in the same hands; and (5) the absence of a local council constitutes an incentive to State interference in municipal affairs.

62. Proposed Improvements in Municipal Government.

As the causes of the misgovernment of cities have become better understood, more definiteness has been given the plans of those seeking to improve conditions. The chief steps now proposed as a means to possible improvement may be summarized under the following heads: —

(1) The effectual prohibition of special municipal legislation, and the granting to cities of general rather than enumerated powers. Special
legislation

(2) Such a change in municipal organization as will give the mayor authority over, and responsibility for, the city's administration; together with an enlargement of the powers of the council by giving that body control of the legislative policy of the city in matters of local interest. Mayor and
council

(3) A restriction of the spoils system in city politics through the adoption of some form of municipal civil service.¹ Civil
service

(4) The separation of municipal from State and national elections. In many commonwealths, municipal elections are now held at a different time of year from other elections, in the hope that candidates for local offices may be chosen on account of individual fitness rather than from a partisan standpoint. Separation
of elections

(5) The exercise of the utmost care in granting franchises to public service corporations, in order that the people of the city may receive an adequate compensation in return for the privileges granted. The referendum or popular vote on franchises eliminates a great source of municipal corruption by placing the ultimate decision concerning franchises in the hands of the people themselves.² Franchises

¹ Such as exists in Philadelphia, Chicago, New Orleans, Grand Rapids, Los Angeles, and in all cities of New York, Massachusetts, Wisconsin, and Ohio.

² At least twenty commonwealths have adopted the referendum for some or all of their cities: California, Colorado, Delaware, Idaho, Iowa, Kansas, Maine, Massachusetts, Mississippi, Missouri, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, and Washington.

GENERAL REFERENCES

- Dillon, John F., *Commentaries on the Law of Municipal Corporations* (4th ed. 1890), I, ch. I.
- Fairlie, John A., *Municipal Administration* (1901), ch. v.
- "Municipal Corporations in the Colonies," *Municipal Affairs*, September, 1898.
- Fiske, John, *Civil Government in the United States* (1904), pp. 98-114.
- Goodnow, Frank J., *City Government in the United States* (1904), chs. I-III.
- *Municipal Problems* (1903), ch. I.
- Hart, A. B., *Practical Essays on American Government* (1905), no. VIII.
- Monographs on Municipal Government, Johns Hopkins University Studies, Series III, nos. 11-12 (Washington); v, nos. 1-4 (Philadelphia, Boston, St. Louis); VII, nos. 2-4 (San Francisco, New Orleans); XIV, no. 2 (Baltimore).
- Proceedings of the Conferences for Good City Government, Annual Meetings of the National Municipal League, 1894 to 1909.
- Robbins, E. C., *Selected Articles on the Commission Plan of Municipal Government* (1909).
- Rowe, L. S., *Problems of City Government* (1908), chs. I-V.
- Shaw, Albert, *Municipal Government in Great Britain* (1895), chs. I-II.
- Weber, A. F., *The Growth of Cities in the Nineteenth Century* (1899).
- Wright, Carroll D., *Practical Sociology* (1899), ch. VIII.

QUESTIONS AND EXERCISES

1. Write an account of the rise and growth of cities in the United States, paying especial attention to the factors in urban development.
2. Write a brief account of the changes of government in your community — the transition from town, village, borough, or county government to city government.
3. Explain the reasons for this change. Point out the needs which are created by urban life (water-supply, sewer system, street lights), and explain why city governments are better fitted than rural governments to meet these needs.
4. What economic causes have contributed to the growth of your city?
5. What was the population of your city at the census of 1910? Population in 1900? Percentage of increase?
6. Make a list of the six largest cities in your State, and give their population; same for the United States.
7. What is the area of your city? Into how many wards is it divided? In which one do you live?
8. When did your city receive its first charter? What is the date of the present charter?
9. Draw an outline map of the city marking the boundaries of the wards, and (using a different color) show the election precincts of your own ward.
10. By which of the following methods was your city charter granted: (a) special act of the legislature giving your city a charter peculiar to itself; (b) a general legislative act providing a form of charter applicable to all cities of a certain size; (c) under a special constitutional provision permitting cities of a certain size to frame their own charters.

11. How may your city charter be amended?
12. Does your State constitution prohibit special legislative acts concerning cities? Why is such special legislation objectionable? (Section 59.)
13. Point out the dual character of your city government: (a) as an agent of the State for the performance of governmental functions; (b) as an organ for the satisfaction of local needs. (Section 46.)
14. In which of these fields may the State government properly exercise greater control?
15. Is there a State commission having authority over any affairs in your city? Are such commissions prohibited by your State constitution?
16. Have you a municipal league, taxpayers' association, or similar organization which seeks to improve municipal conditions?
17. Is there a Chamber of Commerce in your city? Purposes?
18. Are any of the following reforms urged in your city? Give arguments in favor of each: (a) Centralization of executive power and responsibility by creating a "responsible" mayor. (b) The centralization of responsibility by the creation of a commission for the exercise of both executive and legislative powers. (c) Separation of municipal from State and national elections. (d) Establishment of the merit system in filling subordinate municipal offices. (e) "Home rule," or the limitation of State control over city affairs. (f) Reduction of the number of offices to be filled at municipal elections. (g) Nomination by petition or direct primaries instead of by a party convention. (h) The referendum or sanction by popular vote for franchise grants and bond issues.
19. Suggested readings on municipal government: Kaye, P. L., *Readings in Civil Government*, pp. 336-367.

CHAPTER V

MUNICIPAL ORGANIZATION

63. Organization of the Council. In three fourths of the cities of the United States, the council is a single-chamber body. This is the prevailing type for the smaller cities as well as for a majority of the larger ones. Most of the latter have at one time or another tried the double-chamber council; but many have returned to the plan of a single chamber.

Where the council consists of a single chamber, it is ordinarily composed of one member from each ward or district into which the city is divided; but in some cities councilmen are chosen by general ticket.¹ Where the double-chamber system prevails, the upper house or board of aldermen is often chosen at large, or from districts embracing several wards. The size of the council varies greatly, averaging from twenty to thirty members in the larger municipalities, and from five to fifteen in the smaller ones.

The universal qualification for councilmen is that they must be voters of the city in which they live; and generally they are required to be residents of the ward for which they are chosen. The negative qualification is often added that members shall not hold any other public office. The term varies from one to four years, two years being perhaps more general. Where the term is two years, half the members are often chosen annually. Councilmen are usually unpaid in the smaller cities, but in many of the larger ones receive salaries ranging from \$300 to \$2000.

¹ That is, by the voters of the entire city.

64. Legislative Powers of the Council. In the United States, as in Great Britain, the powers conferred upon municipalities are always enumerated in detail; and the courts of both countries hold that municipal powers are to be strictly construed, doubtful questions of authority being resolved against the municipality. This rule of strict construction in connection with the system of enumerated powers has necessitated a multitude of provisions in every municipal charter, since each particular power must be declared beyond doubt.¹ Rule of construction

65. The Council's Police Power. The most important powers of municipal councils are those which may be classed under the head of the police power, by which is meant the power of government to enact such laws as are necessary to the health, comfort, and protection of society. The police power of the State government is a general power limited only by the restrictions of the State and the national constitution; and each commonwealth delegates to the cities within its borders a portion of this power—generally including the right to pass ordinances for the promotion of the public health, security, and comfort, and for the protection of the public morals.²

66. Financial Powers of the Council. One of the most important powers granted city councils is that of levying taxes to defray expenses incurred in the performance of municipal functions. The legislatures ordinarily confer this power subject to important limitations as to the purpose and rate of the tax. Thus the tax must be for a public purpose, and one which is authorized directly or impliedly by the terms of the municipal charter; and it is commonly provided that the rate shall not exceed a certain number of mills on each dollar of valuation of taxable property. The form of tax most largely relied upon for municipal Taxation

¹ Thus the Ohio law governing cities enumerates the general powers of municipal corporations to be exercised by the council under twenty-nine heads and the special powers under seven additional heads, the detailed statement occupying thirty-six pages of the volume of laws of 1902.

² See Chapter XII.

revenues is the general property tax, the levy for city purposes being ordinarily collected along with the county and State taxes.

To defray the expense incurred in making certain local improvements, such as street-paving and sewer construction, it is customary to levy upon the abutting property-owners special assessments upon the theory that they receive a special benefit from the improvement in question. Thus in most cities when a street is opened, graded, or paved, the cost is borne mainly by the abutting property-owners (upon whose initiative such improvements are often undertaken).

Special assessments

Licenses of certain occupations and amusements constitute another important source of municipal revenue. A license may be either a police regulation to prevent some real or threatened evil, or it may be a tax upon certain lines of business. In many cities, proprietors of theaters and other places of amusement, owners of vehicles, liquor-dealers, pawnbrokers, peddlers, and second-hand dealers are required to pay a license.¹

Licenses

Municipal corporations have implied authority to incur indebtedness in anticipation of the general revenue fund, but unless authorized by the legislature, cannot borrow money or issue bonds as evidence of indebtedness. Municipal charters generally contain provisions authorizing the council to borrow money for public purposes, as for street-paving, or construction of waterworks and lighting-plants. When a city borrows money, municipal bonds are issued which are in effect the promissory notes of the corporation. These bonds are ordinarily in denominations of \$500 or \$1000, for a term varying from twenty to fifty years, at four to six per cent interest. They are sold to the highest bidder after due notice by publication.

Borrowing power

67. Miscellaneous Powers of the Council. Eminent domain, or the right to take private property for public purposes, is a power commonly delegated by the legislature to municipal corporations. City councils generally have power to appropriate private property under the following conditions: (1) the property must be for a public use;² (2) notice must be given to the owner; and (3) the property must be appraised in the manner prescribed by law, and the owner compensated for its appropriation.

Eminent domain

¹ In Northern municipalities, licenses are commonly required only for a few specified purposes; but in the cities of the South, the licensing system is more largely used.

² The public uses for which property may be appropriated include parks, streets, canals, sewers, prisons, hospitals, markets, cemeteries, school buildings, libraries and other public buildings, waterworks, gas and electric lighting-plants.

Municipal councils are sometimes made the agents of the State government for the control of education and poor relief within the corporation; but more commonly these functions are entrusted to local boards more or less independent of the council.

Education
and poor
relief

Like private corporations, cities may purchase and hold property for municipal purposes. Cemeteries, waterworks, parks, markets, hospitals, libraries, gas and electric lighting-plants are forms of property regarded by the courts as belonging to the municipality in its private or corporate rather than in its public or governmental capacity.

Property
rights

Municipal councils have implied powers to make such contracts as may be necessary to carry out the purposes for which the corporation was created, and these contracts may be for a longer term than the life of the council making the grant. The most important municipal contracts are franchises or grants of exclusive privileges to companies organized to furnish transportation, lighting, heat, and telephone service.

Contractual
powers

68. Procedure in City Councils. Regular meetings of the council are held at stated times, generally weekly or bi-weekly, special meetings being called from time to time as needed. Like other legislative bodies, municipal councils determine their own rules of procedure, and keep a journal of their proceedings. Generally they have power to compel members to attend and vote.

Meetings,
rules,
journal

Like Congress and the State legislatures, city councils are commonly divided into committees to which proposed legislation is referred for consideration. Among the important committees are those on ways and means, streets and sidewalks, sewers, markets, printing, public lighting, transportation, rules and ordinances, and municipal bonds.

Committee
system

The legislation passed by the council ordinarily requires three separate readings, and unless the rules are suspended these must be at three different regular meetings. Any member of the council may introduce a proposed ordinance, whereupon its title is read and the measure referred to the proper committee (this constituting the first

Ordinances

reading). At a subsequent meeting, if the committee reports favorably, the second reading may take place, the ordinance being read, in full or by title only; and at a third meeting, after being read the measure may be voted upon. If approved by a majority of the council, it is signed by the presiding officer, and unless the mayor has the veto power, it then becomes an ordinance or by-law binding upon all persons within the city. Frequently the municipal charter gives the mayor power to disapprove any ordinance passed by the council; and a measure which is vetoed does not become effective unless the council again passes it by a two-thirds vote — in some cities by a three-fourths or four-fifths vote.

It is often required that ordinances be published in newspapers of general circulation within the municipality, several publications during consecutive weeks being commonly prescribed. To be valid, ordinances must be authorized by the municipal charter or by a State statute; and they must not conflict with any laws of a superior nature, such as a provision of the State constitution or statutes, or of the federal constitution, statutes, or treaties.

69. The Mayor. The chief executive officer of the city is the mayor, who is generally elected by popular vote. This officer is usually chosen for a two-year term in the larger cities, but in New England and in the smaller municipalities a one-year term is common.¹ The mayor receives a salary which varies from a few hundred dollars in the smaller municipalities to \$15,000 in New York City.

70. Legislative Powers of the Mayor. In the smaller municipalities and in a few of the larger ones, the mayor is the presiding officer of the council with a casting vote in case of a tie. But in a majority of the larger cities, he is not a member of the council and his relation to that body more nearly resembles that of the governor to

¹ The term is four years in several cities, including New York, Chicago, Philadelphia, Buffalo, New Orleans, and Louisville; in Boston four years, with the right of recall at the end of two years. In Jersey City the term is five years.

the State legislature. He submits to the council annual and special messages recommending desirable legislation; and in most cases he has a limited veto upon ordinances and resolutions passed by that body.

In many recent charters, the mayor is given the power to veto particular items in an appropriation bill while approving the rest of the measure.¹ Generally he has several days (varying in number from three to fourteen) for consideration of legislation; and if he does not sign or veto the ordinance within that period it becomes effective without his signature.

71. The Mayor's Administrative Powers. Although in nearly all American cities the mayor is in theory the head of the administration, the extent of his actual control greatly varies. In early days his administrative powers were narrowly limited, and in many smaller cities he is still little more than a presiding officer of the council with a casting vote in case of a tie, or in some cases with a qualified veto upon legislation. In these cities the subordinate executive officers are generally elected by popular vote or appointed by the council. This system is virtually council government except as modified by the mayor's veto power.

Under
council
government

In a second class of cities the mayor has considerable power over appointments, and generally nominates the heads of the administrative service subject to confirmation by the council. But he cannot exercise complete control over the administration, since these officers cannot be removed except for cause, and even then the concurrence of the council is generally necessary. Thus responsibility for the administration is divided between the mayor and the council so that neither can be held accountable; and this lack of responsibility has made possible much of the inefficiency and corruption of city governments.

Divided re-
sponsibility

Finally, in a third class of cities, especially the larger ones,

¹ For example, in New York, Baltimore, Boston, Philadelphia, New Orleans, St. Louis, San Francisco, and in all cities in Ohio and Illinois.

recent charters have given the mayor the power to appoint, without the approval of any other authority, the heads of the executive departments; and also the right to remove them at his own discretion at any time during his term. This type of city government has been called the mayor system, since it makes this officer the actual and responsible head of the entire municipal administration.

In all cities the mayor exercises general supervisory powers over the municipal departments. The extent of this authority varies, being most important in those municipalities where the mayor has the power to appoint and to remove department heads. In nearly all cities he may at least investigate complaints against particular departments, make recommendations to the administrative heads, and inspect books and records. In cities having the board system of municipal administration, he is frequently an *ex officio* member of the various boards.

The mayor is the chief conservator of the peace for the city as the sheriff is for the county, and has similar powers with regard to quelling riots and calling upon the governor for the State militia.

72. Judicial Powers of the Mayor. In nearly all municipalities the mayor has the powers of a justice of the peace.

In most of the larger cities the mayor's court, formerly an important institution, has fallen into disuse, the mayor's judicial powers having been transferred to the police judges and judges of the municipal courts. But in the smaller cities, and generally in Delaware, Iowa, and the Southern States, the mayor still exercises judicial powers.

73. Administrative Officials. Greater diversity prevails in the administrative machinery of American cities than

in any other feature of municipal organization. Ordinarily the larger cities have departments of public works, police, fire, health, law, elections, education, libraries, parks, finance, and charities and corrections.

For the selection of administrative officers, many plans are in use, including election by the council, appointment by the mayor with or without the council's confirmation, election by popular vote, and appointment by the State governor. Appointment by the mayor with ratification by the council is the common method, but several recent charters give him the exclusive power of appointment. The treasurer and comptroller are generally elected by popular vote, as are often the police judge, city solicitor, tax assessors, members of boards of public works, and of boards of education. Appointment by the governor is exceptional, but prevails in case of the police and health boards of some cities.

Few legal qualifications are prescribed for administrative officials, and in practice little heed is paid to the candidate's fitness for the particular office which he is seeking. The non-professional character of our administrative service is in marked contrast with that of Germany, where salaried officials are required to prepare themselves by a long course of expert professional training.

The term of administrative officials ¹ varies from one to six years, generally being longer in case of members of municipal boards. For subordinate administrative officials permanence of tenure is secured through civil service in Des Moines, Chicago, Milwaukee, New Orleans, and all cities in Wisconsin, New York, Massachusetts, and Ohio. Elsewhere municipal offices are too often regarded as political spoils.

As a general rule municipal officers receive salaries, especially in the larger cities. Frequent exceptions to this rule are the members of school, library, and park boards. If members of a board receive no salary they are expected to devote only a part of their time to official duties, the routine work of the department being performed by salaried officials.

¹ In Great Britain the term of corresponding officials is three years, in France, four years. In Prussia salaried magistrates are chosen for twelve years, unsalaried magistrates for six years.

74. **Board System vs. Single Commissioner System.** In Great Britain municipal administration is carried on by boards composed of members of the council: in France there is a single commissioner in charge of each department. Both systems exist in this country, but the tendency seems to be in favor of the single commissioner plan. However, such fields of administration as the schools, libraries, parks, public health, police, and public works are frequently managed by boards. The board system secures continuity of policy and greater permanence of tenure for executive officers, since the membership is only partially renewed at one time; and this plan also makes it possible to obtain the unpaid services of able men, who can thus assume the general direction of public business without making too great personal sacrifices.¹ But these advantages are gained at the sacrifice of the administrative efficiency and power of prompt action possible under the commissioner system.

GENERAL REFERENCES

- Ashley, Roscoe L., *The American Federal State* (1903), secs. 488-496.
 Beard, C. A., *American Government and Politics* (1910), ch. xxvii.
 ——— *Readings in American Government and Politics* (1910), ch. xxvii.
 Black, H. C., *American Constitutional Law* (1897), ch. xvii.
 Bryce, James, *The American Commonwealth* (1908), I, ch. L.
 Dillon, John F., *Commentaries on the Law of Municipal Corporations* (1890), 4th ed., I, chs. 2-5, 10, 12-13; II, chs. 15-16, 19.
 Eaton, Dorman B., *The Government of Municipalities* (1899), chs. x-xi, xiv.
 Fairlie, John A., *Municipal Administration* (1901), chs. xvii-xx.
 Fiske, John, *Civil Government in the United States* (1904), pp. 115-140.
 Goodnow, Frank J., *City Government in the United States* (1904), chs. iv-viii.
 ——— *Comparative Administrative Law* (1893), I, chs. iii-iv.
 ——— *Municipal Problems* (1903), chs. ii-iv, ix-x.
 Hart, A. B., *Actual Government* (1903), ch. xi.
 Hatton, A. R., *Digest of City Charters* (1906).
 Municipal Program, National Municipal League (1900).
 National Municipal League, *Proceedings of Conferences for Good City Government: 1894-1895*, pp. 93-104 (Minneapolis); 119-124 (Milwaukee); 407-417 (New Orleans); *ibid.*, 1896, pp. 146-161 (Pittsburg).
 Rowe, L. S., *Problems of City Government* (1908), chs. vi-ix.
 Shaw, Albert, *Municipal Government in Continental Europe* (1897).
 ——— *Municipal Government in Great Britain* (1895).
 Wilcox, Delos F., *A Study of City Government* (1897).

¹ Since their duties are chiefly confined to determining questions of policy, the actual work of administration being left to permanent salaried officials.

QUESTIONS AND EXERCISES

1. Does your council consist of one chamber or of two? Advantages and disadvantages of each plan of organization?
2. Of how many members does your council consist? How does it compare in size with other city councils in your State? Give the qualifications, term, and salary of members.
3. Are the members elected by wards, by districts including several wards, or at large? What are the advantages of each method, or of a combination of two methods?
4. Give the boundaries of the ward or district in which you live. Who is your representative in council?
5. Are members nominated by party conventions, direct primaries, or by petition (nomination papers)? Which method do you consider preferable?
6. Name the officers of the council. How chosen? Duties?
7. How do the police powers of your council compare with those described in Section 65?
8. Describe the financial powers of your council under the following heads: (a) taxation, (b) appropriations, (c) borrowing power. Make a list of the purposes for which the council may exercise each of these powers.
9. What power has your council over the administrative departments of the city (such as the police or fire departments)? Does it appoint and may it remove administrative officers?
10. How many committees in your city council? How chosen? Name the important ones.
11. State the advantages and defects of the committee system of legislation.
12. What is a city ordinance? Where does the council derive its power to pass ordinances? With what higher laws must a municipal ordinance conform?
13. Describe the procedure, step by step, by which an ordinance is passed. Compare with the procedure described in Section 68.
14. Has your mayor the veto power? If so, what vote is necessary to pass an ordinance over his veto?
15. Under what conditions may your council grant a franchise?
16. When does your council meet? Where? Visit a council meeting and write an account of it.
17. State the following facts concerning your mayor: how elected, term, qualifications, salary, how removed.
18. Describe fully the mayor's legislative powers. Has he any judicial powers?
19. What administrative officers does the mayor appoint? Can he remove these officers? Is the consent of the council necessary in either case?
20. What degree of control does your mayor exercise over the city administration? Which of the three types of mayors, described in Section 71, does he resemble?
21. In case of a serious disorder or riot in your city, what would be the duty of the mayor?
22. Make a list of the other important executive officers of your city. State how they are chosen and describe their duties. Do these officers belong to the same political party as the mayor? Are they subject to his control?

23. Make a list of the various boards and commissions in your city government. How is each chosen? State the number of members, terms, and duties.
24. What are the advantages and disadvantages of the board system of administration as compared with single commissioners or heads of departments?
25. Is there a civil service commission in your city? If so, describe its duties.
26. What courts exist in your city? Over what cases have they jurisdiction? How are the judges chosen? Is there a juvenile court? If so, describe its working.
27. Make a study of the last financial statement of your city and prepare a report showing: (a) the amount and sources of the city's income for the fiscal year, (b) the amounts and objects of the city's expenditures for the same period.
28. What is your city tax rate? Compare with the rates for the last ten years, and prepare a chart showing fluctuations in rates, by years. Compare your municipal tax rate with that of another city in your State which has about the same population.
29. What is the gross debt of your city? Is there a sinking fund? What is the net debt? How is this debt to be paid? What is the borrowing capacity of your city? How near is it at the present time to the debt limit?
30. Make the same comparison with regard to your city's debt as suggested in question 28 for the tax rate.

CHAPTER VI

MUNICIPAL ACTIVITIES

75. Police Administration. Police administration in its broadest meaning includes the entire system of internal administration by which the State regulates the conduct of the citizen. In a narrower sense, the term police denotes the special machinery established for the preservation of order and the detection and punishment of crime. This function is especially important in urban communities because of the concentration of population; and it is usually entrusted to an organized force of men who patrol the streets, together with special magistrates or police judges who deal summarily with petty offenders.

The chief function of the police is to enforce the laws and ordinances. More in detail, their duties are to preserve the public peace (suppressing riots, dispersing disorderly assemblages, and maintaining order at elections and public meetings); to patrol the streets for the special purpose of preventing crimes and misdemeanors (with power to arrest persons without warrant when taken in some criminal act); to protect the rights of persons and property; to inspect places of public amusement and those where liquor is sold; to regulate street traffic so as to prevent blockades; to restrain the crowds which gather at fires, and on other occasions; to care for persons who are injured on the streets; to assist and advise strangers; and in fact, to do all things which relate to the orderly conduct of the city.¹

Duties

76. Control of Police Administration. Control of the

¹ In continental Europe, especially in Germany and France, the duties of the police include a close surveillance over inhabitants and visitors, involving the keeping of records of the occupation and movements of an immense number of persons, especially of the criminal and suspicious classes.

police force and final authority in administration is vested either in a single commissioner or in a police board. The single commissioner system prevails in most of the smaller municipalities of the United States, as well as in such large cities as New York, Chicago, Philadelphia, Boston, Detroit, Minneapolis, and Syracuse. The board system formerly prevailed in nearly all the large cities, and is still found in St. Louis, New Orleans, and many others.

To aid in securing men who are qualified mentally and morally for their responsible office, the civil service principle is applied to the police force in many cities, including those of Wisconsin, Massachusetts, New York, and Ohio. Appointments are based upon the results of competitive examinations, and tenure of office is permanent, removal occurring only for specific cause and after a public hearing.

In the United States control of the police has generally been left to the municipal authorities with practically no supervision on the part of the State government.¹ However, the courts have uniformly held that police officers are not private but public or State officers, and that in controlling police the municipalities act merely as agents of the State. Some form of State supervision is justifiable, since the duty to enforce State laws devolves upon the police, and final responsibility for the maintenance of law and order rests upon the State government.²

77. Protection from Fire. The nature of city building renders adequate protection from fire one of the most important municipal functions.³ There is considerable diversity in the organization and equipment of fire brigades. Cities

¹ Exceptions to this statement occur in Kansas City, St. Louis, Baltimore, San Francisco, Boston, Fall River, Birmingham, and a number of Indiana cities, where the police force is controlled by a board or commissioner appointed by the State government. In most foreign countries, state control or a large degree of supervision is the rule.

² The reasons for the adoption of a system of State-appointed police have been: (1) general dissatisfaction with local police management; (2) the neglect of the cities to enforce State laws, especially those in regard to the liquor traffic; (3) partisan political motives.

³ The annual loss from fire in the cities of the United States is about \$60,000,000.

under 10,000 still depend almost exclusively upon volunteer companies; those between 10,000 and 30,000 commonly have a small force of regular firemen with a large number of call men; while in cities of over 30,000 the entire force usually consists of regulars. Nearly all municipalities with over 30,000 inhabitants have steam fire-engines, the pumps of the waterworks furnishing the necessary pressure. In efficiency, equipment, and discipline, American fire departments are far in advance of those of any other country.

78. **Control of Public Health.** To control those agencies which threaten the health of its citizens nearly every municipality with over 10,000 population has a locally chosen board of health or health officer; while the larger cities have a force of sanitary inspectors and assistants. The duties of the municipal health department are manifold, but may be classified under three general heads: (1) Precautionary or preventive measures, including regulation of the sale of food products (to prevent unwholesome food or adulterated milk from being offered in the market), regulation of offensive trades, control of the construction of buildings, of ventilation, of smoke consumption, drainage, plumbing, and special supervision over the removal of garbage and waste. (2) Control of cases of infectious disease, by requiring physicians to report all such cases to the health department, and by insisting upon isolation of dangerous cases in city hospitals, and the employment of scientific methods of disinfection. (3) Collection of vital statistics, or statistics of births, marriages, and deaths.

In the United States, as in all the principal countries, a central authority exercises a general supervision over local health officials. State boards of health have been established in forty-three States, with original authority in certain matters, as well as supervisory powers over local officials.

79. **Public Education.** The administration of public

schools is a most important function of city government, and one for which a large portion of municipal revenue is expended. In practically all American cities the central authority in control of schools is the board of education or school board.¹ In some municipalities this board is regarded as one of the several departments of the municipal government; while in others the board of education is a public corporation, separate and distinct from the city corporation. In the former class of cities the board makes a detailed estimate of the funds needed for school purposes during the ensuing year, this estimate being then passed upon by some other municipal authority, generally the city council.² In the second class of cities the board itself has sole control of taxation for school purposes (provided the levy does not exceed a certain maximum rate fixed by State law); and also has the uncontrolled expenditure of school funds.³

The size of the school board varies, the common number being five, seven, or nine. Popular election is the prevailing method of filling the position, although in some cities the members are chosen by the mayor or council. Election is either by general or district ticket, that is, members are either chosen by the city at large⁴ or else from certain districts or wards. The term ranges from two to five years.

In nearly all cities the board of education purchases school sites, erects and maintains school buildings, and furnishes necessary supplies, sometimes even providing free text-books. Other important functions are the employment of a superintendent and teachers, adoption of courses of study, and selection of text-books.

¹ Buffalo is the only American city of importance in which the public schools are in charge of a committee of the city council.

² In this class are Philadelphia, Chicago, San Francisco, Detroit, Newark, Milwaukee, Louisville, Providence, St. Paul, and many others.

³ This is the position of the board of education in Pittsburg, Indianapolis, Boston, Denver, Minneapolis, Omaha, Lincoln, Allegheny, St. Louis, Rochester, and in all Ohio cities.

⁴ This is the common plan in the larger cities.

The superintendent chosen as head of the educational administration serves for a term varying from one to six years — generally for two, three, or four years. The powers of this officer vary widely in different cities, but the tendency is to give him a large control over the educational side of school administration, including the appointment of teachers and recommendation of text-books and courses of study, generally subject to confirmation by the board of education.

Superin-
tendent of
schools

A clerk or secretary is chosen to look after business details, and in a few cities a school director is employed to look after the physical side of school administration.¹

Other
officers

Within recent years free public libraries, one of the most important aids to education, have had a wonderful development. Such libraries are now maintained in nearly all cities whose population exceeds 25,000, as well as in many smaller ones. Administration of municipal libraries is generally in charge of a board of trustees chosen by the mayor or council, or elected by the people.

Public
libraries

80. Public Recreation. Generous provision for public parks is of especial importance in the large cities with their congested population; but the need of such areas is strongly felt in the smaller ones as well. At the present time most cities whose population exceeds 40,000 have provided a system of public parks, that is, have purchased and set aside tracts of land for public use and recreation. In some municipalities the parks are connected in a chain by means of boulevards or parkways. Provision is frequently made for outdoor sports and for well-equipped park gymnasiums; and botanical gardens and zoölogical museums are sometimes included.

Parks

Within the last decade there has been a strong movement in favor of municipal playgrounds, which afford an important aid to the physical and moral development of city

¹ As in Cleveland, Toledo, and Indianapolis.

children. At the present time about two hundred American cities provide public playgrounds, many of which are equipped with apparatus for games and gymnastics under the charge of competent directors.

Public play-grounds In most cities the management of public parks and playgrounds is under the control of a small board consisting of from three to five members, either elected by the voters or appointed by some municipal authority.

Admin-istration 81. **Charities and Poor Relief.** In the New England States and in New Jersey, poor relief is a municipal function even in the smallest towns. Elsewhere it is a municipal function in a majority of the larger cities; while in the smaller ones (as in the rural districts generally), poor relief is chiefly a county function, although the cities often assist in the work. In the municipalities which carry on public charities, the authority in general charge is either a board of charities (generally unpaid), or a single salaried commissioner.

Methods of poor relief The chief methods of affording relief are (1) through admission to public almshouses and hospitals; (2) outdoor relief, especially in the form of medical assistance to the sick; (3) municipal grants to private charitable institutions; (4) the maintenance of public employment bureaus through which a systematic effort is made to secure employment for able-bodied persons out of work; (5) the regulation of tenements so as to minimize the evils of the congested residence districts of the great cities.

Importance 82. **The City Street.** The concentration of heavy traffic in municipalities makes the question of streets a most important problem. Then too the social importance of the city street can hardly be overestimated, inasmuch as such municipal activities as waterworks, sewers, lighting and heating systems, and urban transportation are absolutely dependent upon the street for their opera-



A VIEW IN CENTRAL PARK, NEW YORK CITY

The park is over $2\frac{1}{2}$ miles long, and over half a mile wide. It covers 843 acres, of which 185 are in lakes and reservoirs and 400 in forest, wherein over half a million trees and shrubs have been planted. There are 9 miles of roads, $5\frac{1}{4}$ of bridle paths, and 31 of walks.



WILLIAM H. SEWARD PARK, NEW YORK CITY

The Girls' Playground. The park provides also grounds for the use of boys.



A PUBLIC BATH FOR BOYS, BOSTON

On the bank may be seen a part of the park and playgrounds.



(By courtesy of the Playground Association of America)

FIELD HOUSE AT SOUTH PARK, CHICAGO

In addition to playgrounds, out-door gymnasiums, and other recreation facilities, the Chicago parks provide indoor gymnasiums in which organized work is carried on through the winter. The Field Houses contain also assembly rooms and libraries.

tion. These conditions seem to justify the statement that "the control of the streets means the control of the city."¹

The street lines of those American cities which have been systematically laid out have ordinarily followed the rectangular plan, the streets crossing each other at right angles. In some cases this plan has been Street plans greatly improved by means of diagonal streets radiating from the center of the city, together with sub-radiations from local centers.²

The principal materials used for street pavements are cobblestones, granite and Belgian blocks, wooden blocks, bricks, asphalt (sheet and blocks), macadam, and gravel. No single material is best in all respects, Paving materials and ordinarily the choice will be largely influenced by the question of cost.

83. Street Cleaning and Removal of Waste. In most cities with over 30,000 population, a considerable portion of the streets is swept at public expense, and a force of men is employed to remove garbage and other refuse. The primitive method of removing garbage was to dump it upon adjacent land or in a near-by stream. With the rapid increase in urban population, a more scientific disposal of waste became imperative, and about seventy cities now employ garbage furnaces or cremators.

84. Sewerage Systems. Modern sewerage systems date chiefly from the middle of the nineteenth century, and at present nearly all cities have underground sewers throughout a large part of their areas. The aim of modern systems is to remove sewage promptly, and dispose of it in such a manner as not to pollute the water, air, or soil.

The first cost of constructing sewer systems, as in case of grading and paving streets, is usually borne by the abutting property-owners. The work is ordinarily done under the supervision of the municipality by the contractor making the lowest bid, and the cost collected from the property-owners by special assessments. In some cities Construction and maintenance part of the original expense of these improvements is paid out of

¹ Wilcox, D. F., *The American City*, p. 29.

² The best arranged city in America, if not in the world, is Washington, planned by a French engineer, L'Enfant, in 1791. The streets range from eighty to one hundred and sixty feet in width, and broad transverse avenues intersect the rectangular streets, forming 302 squares and circles comprising 407 acres of land.

the general fund. The cost of maintaining both streets and sewers is generally borne by the city.

85. Water Supply. No function is of more vital concern to the modern city than that of furnishing its inhabitants with an abundant supply of water free from the specific germs of disease, and fit in every way for domestic and industrial uses. With the concentration of population, the difficulty of obtaining an adequate water supply increases, and the danger of contamination becomes greater. The chief sources of supply are the great lakes of the St. Lawrence system, flowing rivers, lakes among mountains and hills, and artesian wells supplemented by storage reservoirs.

Importance Water is supplied by the municipality in most of the large cities of the United States, as well as in many smaller ones. Of 175 municipalities with over 25,000 population, 133 own their waterworks; and it is now the almost universal practice for the smaller cities, in constructing waterworks, to adopt municipal ownership. The expense of conducting the water department is not paid out of taxes, but from rates or charges levied against users of the water.

86. Public Lighting. In the United States gas-works and electric-lighting plants are generally owned and operated by private companies. Twenty-five cities own municipal gas-works as compared with nearly one thousand private plants; while about 800 cities own electric-lighting plants as compared with nearly 3000 plants under private ownership. Most of the municipal electric-lighting plants are in the central group of States, and generally these are found in the smaller municipalities;¹ but a number of important cities including Chicago, Allegheny, Detroit, and Grand Rapids own their plants.

87. Street Railways. Our first street railways were constructed about the middle of the nineteenth century; and

¹ Only twenty-three cities with over 25,000 population have municipal plants.

the striking growth of urban population in the following decades has made the question of urban transportation one of increasing importance. From the first the construction and operation of street railways has been in the hands of private companies under franchises granted by the city council. Early franchises were for long periods, commonly fifty to one hundred years,¹ and generally imposed no restrictions upon the company except that of paving the street surface between the tracks. Gradually cities came to realize that franchises have a monetary value, and that they should be granted only under conditions which will safeguard the interests of the public. Recent franchises are often limited to a term of twenty years, and provision is sometimes made for payment to the city either of a stated sum, or a certain percentage of the gross receipts. Other common franchise conditions establish a maximum fare (generally three to five cents), provide for universal transfers and improvement of the service, and reserve to the municipality the right to purchase the system.

Early
and recent
franchises

88. **The Problem of Municipal Monopolies.** Writers on economics agree that in industries which are natural monopolies (waterworks, gas and electric lighting-plants, street-railway and telephone systems), permanent competition is impossible; but great diversity of opinion prevails as to the public policy that should be followed with reference to these undertakings. The following courses are open to the municipality in dealing with natural monopolies: —

Relation
of city to
natural
monopolies

(1) The city may authorize a private company to perform the service in question by granting a franchise without making any effort to safeguard public rights or to secure an adequate return for the privileges conferred — a common policy in the earlier period of municipal history.

(2) The municipality may grant franchises to private companies under conditions designed to protect the public

¹ In a number of cities perpetual franchises were granted.

interest. This is now the common plan for street-railway and telephone systems, and is often followed in the case of lighting-plants. The principles that should govern the granting of franchises have been summarized by an eminent writer ¹ as follows: —

(a) Reservation to the municipality of power to determine the charges of public-service corporations.

(b) Public control of capitalization and public supervision of corporation accounting.

(c) Limitation of franchise terms to a period ranging from twenty-five to forty years.

(d) Compensation to the municipality exacted in the form of lower charges rather than large financial returns.

(e) At the expiration of the franchise, the plant at its appraised value to revert to the city.

(3) The city may reserve to itself the ownership of the plant, while authorizing private operation. For example, the waterworks of Denver are owned by the city but leased to a private company; and the same plan is followed in case of the Philadelphia gas-plant, and the New York and Boston subways.

(4) Municipal ownership and operation of local public utilities is urged by many as a remedy for the evils attendant upon our present franchise system.

89. Arguments for Municipal Ownership. The chief arguments in favor of municipal ownership are: —

(1) Public ownership eliminates one of the greatest evils in municipal government — the corruption of officials by private corporations desiring to secure franchises or other privileges. On this point Professor Ely says: "Our terrible corruption in cities dates from the rise of private corporations in control of natural monopolies, and when we abolish them we do away with the chief cause of corruption."

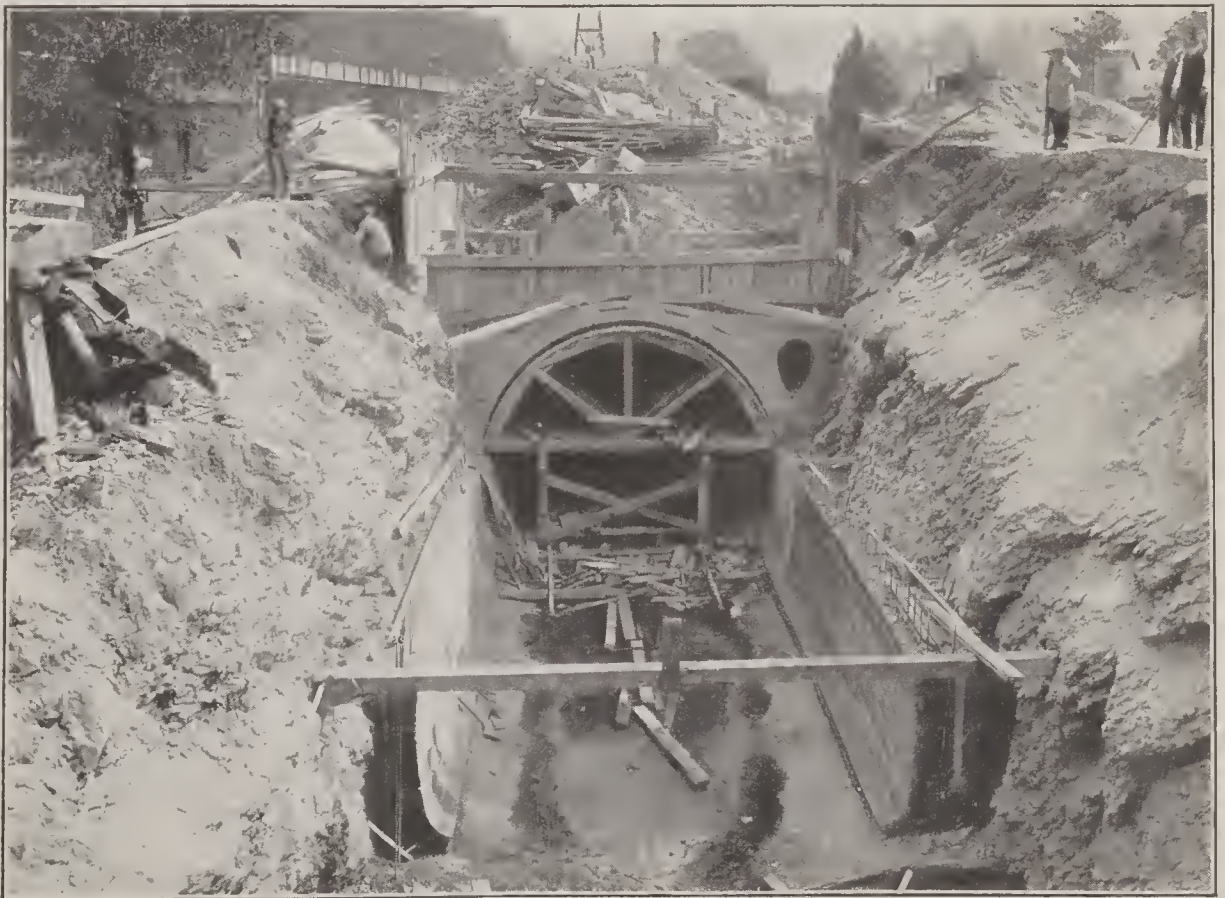
(2) Public ownership gives a fuller and more efficient service, securing the enlargement and extension of facilities as public needs may require. Private companies supply only those services which pay, public ownership those which are needed.

¹ Rowe, L. S., *Problems of City Government*, p. 239.



(By courtesy of the Metropolitan Water and Sewerage Board)

A pumping-station of the Metropolitan Water Works at the Chestnut Hill Reservoir, Boston, Mass. The building contains four pumping-engines whose combined capacity is 145,000,000 gallons of water daily. Eighteen different cities and towns are served by the system of which this is a part.



A section of the Stony Brook Conduit, Boston, Mass. When completed, this conduit will be about $3\frac{1}{2}$ miles in length, and will drain an area of about 50 square miles formerly subject to inundation from the overflowing of Stony Brook and its tributaries. The conduit provides an underground channel for this stream through which the water is conducted into the Charles River.



TWO VIEWS OF THE SAME SCHOOL-YARD IN CLEVELAND, OHIO

The upper shows the unsightliness resulting from neglect; the lower, the effect of making the yard into a school-garden.

(3) Public ownership lowers rates to the community, since the public plant does not have to pay dividends on watered stock, or maintain a lobby or corruption fund, or buy out rival plants, or advertise or solicit business.

(4) Public ownership secures impartial treatment for all consumers, eliminating secret rebates and other forms of discrimination.

(5) Better treatment of labor is claimed for public ownership, as well as the elimination of strikes and lockouts.

(6) Public ownership aids civil service reform, since it necessitates the merit system in municipal administration.

(7) The spirit of coöperation is promoted and civic interest encouraged, thereby fostering better citizenship.

(8) Public ownership tends to a diffusion of wealth, whereas private ownership of natural monopolies tends to concentrate wealth in the hands of a few.

90. Arguments against Municipal Ownership. The principal arguments against municipal ownership are as follows: —

(1) The present corruption and inefficiency of our city governments would be greatly increased by enlarging the number of positions which would become the spoils of the successful political party.

(2) Public ownership is non-progressive, and would not expand facilities as rapidly as private ownership, which secures large investments of capital through the inducement of large financial returns. Compare in this respect the state-owned railroads of Europe with the private-owned roads of the United States.

(3) Public ownership would not lower rates, as public management is generally less efficient and economical than private management. The history of the Philadelphia gas-plant under municipal and under private operation is cited in proof of this claim.

(4) Public ownership would increase enormously the bonded indebtedness of the municipalities, since the private plants would have to be purchased or new municipal plants erected.

GENERAL REFERENCES

- Ashley, Roscoe L., *The American Federal State* (1903), secs. 497-515.
 Beard, C. A., *American Government and Politics* (1910), ch. xxviii.
 ——— *Readings in American Government and Politics* (1910), ch. xxviii.
 Bemis, E. W., *Municipal Monopolies* (1899).
 Conkling, A. R., *City Government in the United States* (1894), chs. iv-xvii.
 Eaton, Dorman B., *The Government of Municipalities* (1899), chs. xv-xvii.
 Eliot, Charles W., *American Contributions to Civilization* (1898), no. vii.
 Fairlie, John A., *Municipal Administration* (1901), chs. viii-xii.
 Goodnow, F. J., *City Government in the United States* (1904), chs. ix-xiii.
 Howe, F. C., *The British City* (1907).
 Maltbie, Milo Roy, *Municipal Functions* (1898).
 Parsons, Frank, *The City for the People* (1901).
 Robinson, Charles M., *The Improvement of Towns and Cities* (1901).
 Rowe, L. S., *Problems of City Government* (1908), chs. x-xiv.
 Whinery, S., *Municipal Public Works* (1903).
 Wilcox, Delos F., *The American City* (1904).
 Willard, Charles D., *City Government for Young People* (1906), chs. ix-xxix.
 Wright, Carroll D., *Outline of Practical Sociology* (1899), ch. ix.
 Zueblin, Charles A., *A Decade of Civic Development* (1905).
 ——— *American Municipal Progress* (1903), chs. ii-x.

QUESTIONS AND EXERCISES

1. Is authority over police administration in your city vested in a single individual, or in a board of commissioners? Does the State government exercise any direct control in police affairs?
2. Describe the organization of the fire department in your city. How many firemen are employed? What was the cost of police and fire protection in your city last year?
3. Are the police and fire departments under civil service rules? Give arguments in favor of this plan.
4. Is your municipal health department under the control of a board, or a single commissioner? Describe the duties and work of this department.
5. How many members on your board of education? Are they chosen from wards, districts, or at large? What are their terms? Their powers?
6. Name the principal officers of your board of education, and describe their duties.
7. How many school buildings in your city? How are the teachers chosen? Does your board provide free text-books? Give arguments for and against this plan.
8. What was the cost of public education in your city last year? What per cent of the entire municipal revenues was expended for school purposes?
9. How many pupils were enrolled in your public schools last year? In the elementary department? In the high school? How many graduated from high school last year? What per cent of those who enter the first grade complete the high-school course? Why do so large a number of those who enter school fail to complete the course?
10. Does your city have a free public library? What authority controls it? How many volumes in the library?

11. Describe your public park system, stating what authority is in control, and annual cost of maintenance. Name, locate, and give the areas of the principal parks. Are they well located and managed?
12. Does your city maintain public playgrounds for children? Does it provide municipal baths?
13. How is poor relief administered in your community? What was the cost last year? In what way is poor relief given?
14. Is the cost of street paving paid out of the general fund, assessed upon property-owners, or is a combination of the two methods employed? Are your streets well paved? What materials are chiefly employed? Are the streets kept clean and in good repair? Cost of maintenance last year?
15. Is your water supply under municipal or private control? If the latter, name the authority in charge. How is the cost met? Describe the supply system and the distributing system.
16. Are your streets lighted by gas or by electricity? Is the plant under public or private control?
17. Give arguments for and against municipal ownership of waterworks and lighting-plants.
18. When was the franchise granted under which your street railway operates? When does it expire? What are its provisions respecting rates of fare, transfers, and paving between tracks? May the rates of fare be modified during the term of the franchise? Does the company pay the city an annual sum for the use of the streets?
19. In awarding a street-railway franchise, should a city aim to secure a large financial return from the company, or should compensation to the community take the form of lower fares to passengers? Why?
20. Give arguments for and against municipal ownership of street railways.

CHAPTER VII

ORIGIN OF STATE GOVERNMENTS

91. The Establishment of Colonies. All of the original thirteen States with the exception of Georgia were established as colonies during the seventeenth century.

Colonial charters The early English method of colonization was to grant charters to commercial companies patterned after the famous East India Company. The most notable charters were those of the London and Plymouth Companies under which the colonies of Virginia and Plymouth were established. The charters generally named the individuals to whom the grant was made, defined in somewhat vague terms the territorial limits of the colony, and provided a framework of government. Ordinarily the granting of the charter preceded actual settlement; but Rhode Island and Connecticut — founded by emigrants from other colonies — did not receive charters until after the settlements had been made.

92. Classification of Colonial Governments. With reference to their internal organization and their relation to Great Britain, the American colonies may be classified as first, royal provinces; and second, chartered colonies, including the proprietary and corporate types. The chartered colonies were governed under charters from the British crown which granted them substantial rights of self-government; while in the royal provinces the governor's commission and instructions, and the laws of England so far as applicable, took the place of a charter. In the chartered colonies the absence of a royal governor made imperial control correspondingly weaker; and hence it was the policy of the British government to

transform chartered colonies into royal provinces whose executive and judiciary should act directly under authority of the king. Throughout the greater part of the seventeenth century the chartered colony was the prevailing type;¹ but ultimately a majority of these became royal provinces.

During the half-century immediately preceding the American Revolution, seven of the colonies were royal provinces, namely, New Hampshire, New York, New Jersey, Royal colonies Virginia, North Carolina, South Carolina, and Georgia. In these colonies the governor and executive council were appointed by the crown.

The proprietary governments included Maryland, Pennsylvania, and Delaware. In these colonies some favored individual or family — that of Lord Baltimore in Proprietary colonies Maryland and of William Penn in the other two — exercised the prerogatives which belonged to the crown in the royal provinces.² But in both proprietary and royal colonies the government was subject to a considerable degree of popular control through representative assemblies whose powers waxed greater from year to year.

Rhode Island, Connecticut, and Massachusetts were corporate colonies possessing charters which granted them a large degree of independence. In fact, “the cor- Corporate colonies porate colonies of New England were practically commonwealths and developed with scarcely any recognition of the sovereignty of England.”³ In Connecticut and Rhode Island the people chose the governor and the executive council, as well as the popular assembly. Under the charter of 1629, Massachusetts had similar powers; but the charter of 1691 established a government which was a compromise between the royal and corporate types.

93. Common Characteristics of the Colonies. Notwith-

¹ Until 1684 only two colonies, Virginia and New Hampshire, were definitely organized as royal provinces.

² The proprietary colony was “a miniature kingdom of a semi-feudal type, and the proprietor was a petty king.” — Osgood, H. L., *The American Colonies in the Seventeenth Century*.

³ Osgood, H. L., *The American Colonies in the Seventeenth Century*, Introduction, p. 28.

standing these differences in governmental organization, the colonies possessed many attributes in common. First, all the colonies were dependencies of the British crown. Second, the colonists enjoyed the rights of British-born subjects, and claimed the benefit of the common law of England as modified to meet the more democratic conditions of the new world. Third, local legislatures everywhere existed, the lower houses of which were chosen by popular suffrage; and these claimed a constantly increasing share in the affairs of government. Fourth, all of the colonies had a system of local self-government patterned more or less closely after English institutions. Finally, nearly all of the colonies had been granted charters during the early part of their history, and had thus grown accustomed to a fundamental law establishing a framework of government; and these charters eventually developed into the written constitutions now common to all the States.

94. **The Colonial Legislature.** The colonial legislature ordinarily consisted of two houses.¹ The upper branch was the governor's council appointed by the crown or the governor (except in the corporate colonies). This council had a three-fold character, since it was an administrative body, a high court, and a branch of the legislature. The lower house or assembly consisted of representatives generally chosen for a term of one year.² At first the representatives sat in joint session with the governor and his council; but gradually the assembly gained the right to sit apart from the council, and thus became a distinct and independent body, with the right to vote separately upon all legislation. The constitutional history of the colonies is marked by a series of contests between the governors and assemblies, especially over questions of taxation and expenditure. At the outbreak of the Revolution (1775), the assemblies had established their right, shared with the council, to

¹ Except in Pennsylvania, Delaware, and Georgia.

² The first representative assembly in America met in Virginia in 1619, only twelve years after the founding of the colony.

initiate legislation; and through their power to vote taxes, they had a considerable check upon the executive.

95. **The Colonial Governor.** The powers of the colonial governor were large, especially in the early period of colonial history and in the royal colonies.¹ The royal governor acted under direct commission from the crown, and had large powers of administration, including the appointment of judges and nearly all other officials. Moreover, in the royal and proprietary colonies the governor controlled the upper house or council, and had at all times an absolute veto upon measures passed by the legislature. In addition to the governor's veto power, the British crown reserved the right to disapprove any colonial legislation — a prerogative from which only Connecticut and Rhode Island were exempt.

Powers

96. **Relations with Great Britain to 1760.** England's colonial policy down to the Revolution of 1688 was in general a *laissez-faire* (let-alone) policy, the colonists being left to work out their own salvation. Colonization was largely in the hands of private individuals, associations, or corporations, acting under authority of royal charters or simply by sufferance of the crown. Governmental authority was distributed among a number of separate colonies — of which there were twelve in 1684; and over these Parliament exercised only the slightest control. The territories in America were regarded as the domain of the crown, and not until the time of the Commonwealth (1642–1660) did Parliament concern itself actively with colonial affairs.

Early colonial policy

The period from 1688 to 1715 was marked by an increased interest in colonial affairs owing to Great Britain's desire to utilize the resources of the colonies in the development of her own national power. By the navigation acts of the Commonwealth and Restoration governments, Parliament undertook to regulate colonial commerce and industry in accordance with prevalent mercantile theories. Since the existing colonial governments could not be relied upon to enforce the acts of navigation and trade, new administrative machinery had to be

Extension of imperial control

¹ The royal governor enjoyed such high prerogatives in colonial times that the first State constitution-makers, having learned by experience to fear executive authority, usually provided for the supremacy of the legislature and gave their governors very little power." — Beard, C. A., *American Government and Politics*, p. 5.

devised. Accordingly the acts of 1696 established the Board of Trade and provided new customs officials and admiralty courts. The attempt begun by James II to vacate the charters of the proprietary and corporate colonies was followed up with a large measure of success; and by the close of 1691 the number of royal governments had been increased from two to five. In general, therefore, this period was one of closer imperial control.

Then came a change. The years from 1715 to 1740 are known as the period of "salutary neglect" under Walpole, during which the colonies were improving their opportunities to develop along their own lines, and were preparing to assume an attitude of independence and later of defiance. For the most part the colonists were left to govern themselves; and accordingly they levied their own taxes, legislated on questions of personal and property rights, and in general prospered through Great Britain's neglect.

The period from 1740 to 1760 was one of war, and naturally the chief interest in colonial affairs was from a military point of view.

It was necessary to defend the colonies and at the same time to attack the French in the St. Lawrence and Mississippi valleys. The colonies, especially those south of New York, seemed lukewarm in supporting the British troops; and hence the home government favored plans for colonial coöperation in military affairs, a policy which culminated in the Albany Congress.

97. Policy of Imperialism. At length, when George III succeeded to the throne of Great Britain (1760), a vigorous colonial policy was inaugurated. This monarch sought to rule as well as reign; and his policy for the time arrested political progress in Great Britain, and eventually brought on the American Revolution. After years of laxity toward the colonies, the British government determined to carry out a policy of imperialism,—that is, determined to unify the Empire by asserting the authority of Parliament throughout British domains. The colonial governors and judges were to be made independent of the assemblies; colonial trade regulations were to be vigorously enforced; and regular troops were to be stationed in America and supported in part by colonial taxes.

The progressive imperial policy was doomed to failure not only because its execution was entrusted to such tactless ministers as Grenville and Townshend, but also because the long years of self-government had made the colonists independent in spirit and resolutely opposed to

surrendering any privileges of self-government. With regard to their relations to Great Britain the colonists made a distinction between allegiance to the crown and subjection to Parliament: the former was conceded, the latter denied. While the authority of Parliament was not utterly repudiated, the colonists insisted that a distinction must be made between general acts of Parliament for the purpose of regulating trade and commerce throughout the entire Empire, and acts which directly imposed taxes upon the colonies. The power of Parliament to regulate navigation and trade by general acts was admitted during the early part of the dispute; but internal taxes the colonists declared could be lawfully levied only by the colonial assemblies.

Shortly after the close of the French and Indian War, Parliament asserted its right to tax the colonies for the support of the Empire; and even declared its power to legislate for the colonies "in all cases whatsoever." The crown, it was claimed, could grant no charters exempting the colonies from the supreme legislative authority of Parliament, which prevailed wherever the sovereignty of the crown extended. Hence the colonists in their new home owed the same subjection and allegiance to the supreme power as if they resided in England. Parliament's legislative power over the colonies was therefore supreme and complete, including the power of taxation as well as of general legislation.

98. The Dispute over Representation. The colonists claimed exemption from the general authority of Parliament by virtue of the British constitution itself.¹ English doctrine running back to Magna Carta (1215) declared that taxes could be levied only with the consent of the people given through their representatives; and hence Parliament had no authority to levy a direct tax upon the colonists, since they were not represented in that body. In answer to this it was contended that "virtual representation" satisfied the meaning of the British constitution; and in that sense the colonists were represented in Parliament. Much of the bitter controversy that followed arose from the conflicting views of America and Great Britain as to what constituted representation.

In the colonies there had long been a distinct territorial basis for representation; thus in New England the towns, and elsewhere generally the counties, sent representatives to the colonial assemblies. Moreover, residence within the particular district was com-

**The British
theory**

**Taxation
and repre-
sentation**

¹ Also by virtue of their colonial charters and the "immutable laws of human nature." — Declaration of Continental Congress of 1774.

monly required for both voters and representatives. Hence the maxim "no taxation without representation" meant to the colonist that no taxes should be levied except by a legislative body in which was seated a member from his district chosen by its voters.

**American
theory of
representa-
tion**

In Great Britain a very different view of representation prevailed. In that country for many years no attempt had been made

**Representa-
tion in Great
Britain**

its apportion representation according to population.¹ As a result ancient boroughs like Tavistock or Old Sarum with less than a dozen inhabitants continued to send one or two members to Parliament; while such flourishing cities as Birmingham, Leeds, Manchester, and Liverpool had no representatives at all. Three hundred and seventy-one members, or more than half of the House of Commons, were chosen by one hundred and seventy-seven persons. Notwithstanding this condition, all Englishmen were held to be virtually represented in the House of Commons, since in theory each member of that body represents not a single borough only, but all parts of the Empire.²

Hence the British government claimed that the colonists like other Englishmen were virtually represented in the House of Commons; and if they did not directly participate in the election of its members, they were at least no worse off in that respect than the great body of Englishmen at home. The American answer to this argument was, that in England the non-electors were under no personal incapacity to vote and might acquire the franchise, while the colonists could not. Further, in England the interests of the electors were inseparably connected with those of the non-electors, and a statute oppressive to one class would also be oppressive to the other; but the colonists had no such safeguard, for acts oppressive to them might be popular with the English electors.

**Virtual
representa-
tion**

99. The Mercantile Colonial System. Underlying the political causes of the Revolution — disputes over royal prerogative and questions of parliamentary and colonial rights — was a fundamental economic cause, the colonial system. European powers including Great Britain looked upon their colonies as settlements made in distant parts of the world for the purpose of increasing the wealth of the colonizing country. Colonies were to furnish a market for the production of raw materials which the mother country wanted to buy, and for

**Economic
theory
concerning
colonies**

¹ No new Parliamentary boroughs had been created since the Restoration (1660).

² English custom has never required that a member of Commons should be a resident of the district which elects him.

the consumption of manufactured products which the mother country wished to sell.

In accordance with these doctrines, Great Britain passed a series of acts relating to navigation and trade which were designed to exploit the colonies in the interests of English merchants and manufacturers. These consisted of (1) acts of navigation intended to protect English shippers against foreign competition; (2) acts of trade designed to secure to English merchants a monopoly of colonial commerce; (3) acts giving to English manufacturers a monopoly of the colonial market.

Acts of
navigation
and trade

Although for many years the laws of trade were systematically evaded, this system of economic paternalism was a source of irritation and discontent to the robust people living three thousand miles away from the seat of power. At length, at the close of the French and Indian War (1763), the British ministry under Grenville's leadership determined to enforce the acts of navigation and trade in order to help defray the expenses of the war. Accordingly orders were sent to the American custom houses and the British war-vessels on the coast to use every effort to prevent smuggling. The rigorous enforcement of these acts threatened the commercial prosperity of the colonies; and the real issue between them and Great Britain became one of home rule — whether the colonies were to be allowed to map out their own destinies, or whether they were to be held in permanent tutelage to the British government. Economic freedom or dependence was thus the fundamental issue. In the words of Bancroft: "American independence, like the great rivers of the country, had many sources; but the head spring which colored all the streams was the Navigation Act."

Results of
mercantile
system

100. Resistance to Great Britain. The Stamp Act passed by the British Parliament in 1765 marked a crisis in the dispute between the colonies and Great Britain. As internal taxes the stamp duties were especially obnoxious to the colonists, and in consequence of the universal resistance to the measure it was repealed in 1766; but another act passed at the same time asserted Parliament's power to legislate for the colonies "in all cases whatsoever."

The
Stamp Act

Shortly after the repeal of the Stamp Act, the British government under Townshend's leadership determined to try again to tax the colonies for imperial purposes. This time Great Britain endeavored to meet the colonists upon their own ground by discriminating between internal and external taxation. Accordingly the Townshend Acts (1767) levied

Townshend
Acts

duties upon certain imported articles,¹ and were thus external taxes as defined by the colonists themselves. The proceeds were to be used to pay the salaries of the governors and judges, thus rendering them independent of the contentious assemblies.² Writs of assistance were legalized, and the collection of the duties was further aided by the establishment of admiralty courts which should try revenue cases without a jury, thus preventing popular sympathy from shielding violators of the law.

Popular resistance to the Townshend Acts was immediate and widespread. The colonists now abandoned their distinction between internal and external taxation, and denied entirely the power of Parliament to tax the colonies. The right of trial by jury was declared inalienable, popular control of the executive and judiciary was demanded as necessary to free government, and writs of assistance were denounced as illegal. Owing to this vigorous resistance the issue was sharply drawn whether Great Britain had the right to tax her colonies. The British government feared that to surrender the principle of taxation would be to abandon the policy of imperial control. At length Parliament repealed all the Townshend Acts except the tax on tea, thus removing everything but the offense, — “fixing the badge of slavery upon the Americans without service to their masters.”³

From this time on, the chain of events in colonial history consists of a series of links leading to open rebellion. Non-importation agreements, the so-called Boston massacre (1770), the burning of the *Gaspée* (1772), and the Boston Tea Party (1773), showed the resolute attitude of the colonists. Great Britain, equally determined, replied in 1774 with the five “intolerable acts,” and the die was irrevocably cast. Boston’s port was to be closed until the town should pay for the tea. The charter of Massachusetts was annulled, its executive and judicial officers placed under royal control, its town-meetings deprived of nearly all powers of local government. The governor was empowered to send to Great Britain for trial any persons indicted for crimes committed in the suppression of riots or enforcement of the revenue laws. These three statutes constituted the coercive system; and to aid in their enforcement, a fourth act legalized the quartering of troops upon the inhabitants. Finally, the fifth act of

Attitude of
colonists

Forcible
resistance

¹ Including glass, lead, painters’ colors, paper, and tea.

² “The purposes for which the revenue was to be used showed clearly that the object of this legislation was not to regulate trade, but to assert British supremacy over the colonies at the expense of their political freedom.” — Fiske, John, *The American Revolution*, I, 31.

³ Junius (ed. of 1799), II, 31.

the series granted religious freedom to the people of Quebec, and extended the boundaries of that province southward to the Ohio River in defiance of the territorial claims of Massachusetts, Connecticut, New York, and Virginia. This extensive region was to be governed by a viceroy with despotic power; and colonists who came to live there were to have neither popular meetings, nor *habeas corpus*, nor freedom of the press.¹

To these repressive acts Massachusetts could make but one answer — forcible resistance or absolute submission. Within two days after a copy of the port bill reached Boston, the Massachusetts committees of correspondence addressed **The appeal to arms** the committees in all the colonies, recommending non-intercourse with Great Britain. When Governor Gage with four regiments sought to enforce the punishment meted out to Boston, sympathy and fear furnished the hitherto lacking bond of union among the colonies. The Virginia house of burgesses, dissolved by Governor Dunmore, recommended (May 27, 1774) an annual Congress of all the colonies “to deliberate on those general measures which the united interest of America may from time to time require.” Accordingly, the first Continental Congress assembled at Philadelphia in September, 1774. After several weeks of discussion, this body adopted a Declaration of Rights and Grievances, and an agreement or “Association” pledging the colonies to suspend trade with Great Britain until redress should be obtained.² But the period of discussion was rapidly nearing a close, and throughout the continent preparations were being made for forcible resistance. Within a few months came the appeal to arms. Actual hostilities were precipitated by Gage’s efforts to destroy the military stores at Concord (April 19, 1775); and the fight at Lexington and Concord marked the beginning of the Revolution.

101. Declaration of Independence. Redress of grievances rather than independence was the aim for which the American patriots took up arms in 1775; but by January of the following year it had become evident that there could **Growth of spirit of independence** be no middle course between complete separation or absolute submission. The growth of a spirit of independence had been greatly increased by the action of the British government in employing the Hessians, and also by the appearance, early in 1776, of Paine’s “Common Sense,” a widely circulated pamphlet urging separation from the mother country. Beginning with the Mecklen-

¹ See the *Declaration of Independence* wherein the Quebec Act is cited as one of the grievances.

² The “Association” was effectually supported by committees of inspection throughout the country.

burg Resolutions of May, 1775, towns, counties, and colonial legislatures sent memorials to Congress asking that independence be declared. By May 15, 1776, the sentiment in favor of independence was so strong that Congress passed a resolution recommending to the colonies the formation of State governments, and declaring that the exercise of all authority under the crown of Great Britain should be totally suppressed.

On June 7, 1776, Richard Henry Lee, of Virginia, moved the adoption of a formal declaration of independence; and a few days later a committee was appointed consisting of Jefferson, John Adams, Franklin, Sherman, and Livingston, to draw up such a declaration. The draft was written by Thomas Jefferson, and on July 1 the committee made its report, which was formally adopted July 4.

The Declaration really consists of three parts: the first contains an exposition of political philosophy, based largely upon John Locke's great "Essay on Government"; next follows an enumeration of grievances, twenty-nine in number, put forward as the justification for separation; and the third part consists of the declaration that the united colonies are free and independent States. The adoption of the Declaration marks the birth of a new nation, and the colonies thereupon assumed the title of the United States of America.

GENERAL REFERENCES

- Andrews, Charles McLean, *Colonial Self-Government* (1904).
 Ashley, R. L., *The American Federal State* (1903), chs. III-IV.
 Bancroft, George, *History of the United States* (1883), vol. III.
 Beard, C. A., *American Government and Politics* (1910), ch. I.
 ——— *Readings in American Government and Politics* (1910), chs. I-II.
 Cambridge Modern History, VII, *The United States* (1906), chs. I-II, V-VI.
 Channing, Edward, *A Student's History of the United States* (1904), pp. 130-166.
 Fiske, John, *The American Revolution* (1891), I.
 Greene, E. B., *Provincial America* (1905), chs. I-V, XI, XVI.
 Hart, A. B., *American History Told by Contemporaries*, II, chs. VII-XI, XXI-XXV.
 Howard, G. E., *Preliminaries of the Revolution* (1905).
 Ingram, J. K., *History of Political Economy* (1888), ch. IV.
 Landon, Judson S., *The Constitutional History and Government of the United States* (1905), chs. I-III.
 Macdonald, William, *Select Charters and Other Documents* (1904), pp. 253-396.
 Osgood, Herbert L., *The American Colonies in the Seventeenth Century* (1904).
 Schouler, James, *Constitutional Studies* (1904), pp. 9-28.
 Story, Joseph, *Commentaries on the Constitution of the United States* (5th ed., 1905), secs. 1-217.

- Thorpe, Francis N., *Constitutional History of the United States*, I, pp. 1-165.
Thwaites, R. G., *The Colonies* (1904).
Van Tyne, C. H., *The American Revolution* (1905), chs. I-II.
Woodburn, James A., *The American Republic and its Government* (1908), ch. I.

QUESTIONS AND EXERCISES

1. Point out the analogy between the colonial charters and our State constitutions.
2. State facts tending to justify the statement that the colonial governor was a reduced copy of the British king.
3. Prepare a report upon the mercantile colonial system.
4. Describe the transition from colonial to State governments. (Bryce, James, *The American Commonwealth*, I, ch. xxxvii.)
5. Contrast the American and British theories of representation during the eighteenth century.
6. When was the British Parliament reformed and made really representative? Effects of this measure?
7. Explain the difference between a revolution and a rebellion. Give instances of each in British and American history.
8. State and discuss the principal causes of the American Revolution.
9. Name the principal grievances enumerated in the Declaration of Independence.
10. Compare the declarations of rights of 1765 and 1774 with the Declaration of Independence, showing the growth of the spirit of self-government.
11. Is taxation without representation always tyranny? Have we any instances now of taxation without representation?
12. What were the chief political effects of the Declaration of Independence?
13. What was the effect of the American Revolution upon British politics? Upon the political situation in France?
14. Compare our Revolution with the French Revolution as to causes, character, and results.

CHAPTER VIII

STATE CONSTITUTIONS

Adoption 102. **Early State Constitutions.** New Hampshire,¹ South Carolina, Virginia, and New Jersey adopted State constitutions before independence was declared; and by 1780 all the States except two had followed their example. The two exceptions were Connecticut and Rhode Island, whose ancient charters were so liberal that with slight changes they served for many years as State constitutions.² Of these eleven early constitutions, only that of Massachusetts was submitted to popular vote for ratification, a practice now almost invariable; but the conventions and congresses which framed the others acted in a representative capacity.

Significance The great significance of the Revolutionary constitutions lies in the fact that for the first time in history the people had ordained written constitutions superior to and limiting the government, and alterable only by the people themselves.³ The leading features of these constitutions were undoubtedly suggested by the colonial charters, which were modified to meet the new conditions created by the Revolution.

Early constitutions 103. **Parts of the State Constitutions.** The early State constitutions ordinarily consisted of two parts: first, the bill of rights, an enumeration of the civil and political rights of the individual; and second, an outline

¹ On January 5, 1776, New Hampshire adopted the first State constitution formed by the people.

² Connecticut adopted a new constitution in 1818, Rhode Island in 1842.

³ A State constitution has been defined by Bryce as "a comprehensive fundamental law, or rather group of laws included in one instrument, which has been directly enacted by the people of the State, and is capable of being repealed or altered, not by their representatives, but by themselves alone." — *The American Commonwealth*, I, p. 427.

of the general framework of government, providing for executive, legislative, and judicial departments, and prescribing the qualifications for the suffrage.

In addition to the foregoing, modern constitutions commonly contain a large number of miscellaneous provisions relating to finance, education, corporations, taxation, and public institutions. The method of constitutional amendment is also prescribed; and sometimes a schedule is added providing for the method of ratification, and for the transition from the previous constitution to the new one. Modern constitutions

104. **Bills of Rights.** Seven of the original thirteen States inserted in their first constitutions a declaration of the fundamental rights of the individual, and their example has since been generally followed. These declarations are the legitimate successors of such great English bills of rights as Magna Carta (1215), Petition of Right (1628), and the Bill of Rights (1688); and they also reaffirm the principles of the American declarations of rights as avowed by the Stamp Act Congress (1765), the first Continental Congress (1774), and finally the Declaration of Independence (1776).¹ Origin

The bill of rights commonly affirms the general principles of republican government, that all powers are inherent in the people and all free government formed by their authority; that elections shall be free and equal; and that the laws shall not be suspended except by the legislative assembly. Generally the fundamental rights of the individual are also asserted—that all men have certain inalienable rights, including those of enjoying and defending liberty, and acquiring and possessing property. Other important safeguards against oppression or injustice are often added, including guaranties of the right of free speech, trial Provisions

¹ "The colonists had in vain contended that an act of Parliament against Magna Charta was void, and they therefore were explicit in defining the rights of the people which their own governments must not invade." — Landon, J. S., *The Constitutional History and Government of the United States*, p. 60.

by jury, the free exercise of religious worship, and the right peaceably to assemble and petition the government for redress of grievances.¹

105. Early State Legislatures. The legislature constituted the most prominent feature of the early State government, and its authority was unrestricted except by the bill of rights. Notwithstanding this large power, the duties of the early legislature were few, since the simple agricultural life of the eighteenth century involved few of the problems which confront the modern industrial State.

With the exception of Georgia and Pennsylvania, all legislatures consisted of two branches, a lower and an upper house, each designed to act as a check upon the other. Members of the lower house were everywhere chosen for a term of one year; while in a few commonwealths the members of the upper house were elected biennially.

106. The State Executive. Protracted contests with the royal governors had inspired the colonists with a profound distrust of executive power; and this feeling is reflected in numerous provisions of the early constitutions. The short term, the limited authority, and the ineligibility of the governor to succeed himself in office were intended to prevent any danger of executive tyranny. The governor had the military powers formerly exercised by his colonial predecessor, but in most States he could not veto a bill,² or grant a pardon, or make appointments except to minor military and judicial offices. In several commonwealths the governor's power was further restricted by means of an executive council modeled partly after the British Privy Council and partly after the colonial executive council. In five States the governor was chosen by the people, in the others by the legislature.

¹ For a typical bill of rights, see article I of the constitution of New York.

² The Massachusetts constitution of 1780 set the precedent for future practice by conferring a limited veto which the legislature might overrule by a two-thirds vote.

107. **The Judiciary.** The judicial power was vested in courts whose judges were either appointed by the executive or elected by the legislature. Good behavior was the judicial term originally adopted by a majority Changes of the States. Of the three departments of government the judiciary was least affected by the Revolution. The principal change was the separation of legislative and judicial functions, the legislatures being deprived of any judicial powers formerly exercised. Another reform consisted in defining more accurately the jurisdiction of the various courts.

108. **Checks and Balances.** The governmental checks and balances which formed a prominent feature of the early constitutions have been retained and elaborated Separation
of powers in more recent ones. The most important of these is the separation of the executive, legislative, and judicial powers ¹ by the creation of distinct departments for the exercise of each power. Upon legislative action there is now (although not in early constitutions) the check of the executive veto; upon the executive and judiciary the legislature has a restraint through the power of impeachment; and finally, the judiciary constitutes a check upon both legislature and executive, since it may declare legislation unconstitutional, and may restrain executive agents from acts in excess of their authority.

The second great principle included under the term "checks and balances" is that of division of powers between the State and federal government on the one Division
of powers hand, and between the State and local government on the other. Through this division each government is entrusted with those functions which it is best adapted to perform, and encroachment by one authority upon another is prevented by written constitutions defining the powers of each government.

¹ The first elaborate discussion of the principle of separation of governmental powers was that of the great French publicist, Montesquieu, whose work *L'Esprit des Loix* (The Spirit of the Laws), was published in 1748. Montesquieu wrote of the British government where separation of powers had ceased to exist in fact, Parliament having become the all-powerful element of the British government.

109. Development of State Constitutions. Three periods may be distinguished in the development of State constitutions: first, from 1776 to 1800 (including the Revolutionary constitutions and the new constitutions adopted within the next twenty years);¹ second, from 1800 to the Civil War; third, from the Civil War to the present time.

110. Second Period, 1800-1860. The period from the beginning of the nineteenth century to the Civil War is marked by the democratic spirit which everywhere left its imprint upon political institutions. The principle became firmly established that a constitution should be framed by a special convention called for that purpose, and subsequently ratified by popular vote. The property qualifications formerly prescribed for voters were replaced in most commonwealths by universal manhood suffrage. The election of the governor was taken from the legislature and given to the people; and in most States the judiciary likewise became elective.

Executive councils and councils of revision gradually disappeared, and in several commonwealths the governor's power was further increased by granting him a limited veto. Legislative power was somewhat restricted, first, by prohibiting its exercise in certain directions; and second, by introducing into the constitution a large body of ordinary law upon subjects which in earlier days would have been left to legislative discretion.

111. Third Period, 1860 to the Present Time. Three important characteristics mark the third period in the development of State constitutions. First, the tendency to strengthen the executive and judicial departments. The terms of the governor and judges have been lengthened; and except in a single State (North Carolina), the governor has been entrusted with a limited veto upon legislation.

The second characteristic is the placing of important limitations upon the power of the legislature. The limitations most commonly found are those upon special legislation, concerning internal improvements, restricting the amount of indebtedness which may be incurred during any one year, and limiting the length of the legislative session.

A third characteristic is the enlarging of the field of administrative activity. The agricultural State of the eighteenth century

¹ The leading characteristics of the first period of constitutional development have been pointed out in Sections 102-107.

has been succeeded by the modern industrial State, and the field of governmental activity has broadened accordingly. **Admin-istrative activity** Hence recent constitutions include numerous provisions concerning the public schools, charitable and reformatory institutions, regulating the hours of labor and conditions in factories and workshops, protecting the public health, suppressing lotteries and gambling, regulating corporations, and providing for the government of municipalities.

112. Enactment of State Constitutions. Many of the Revolutionary constitutions were drawn up by conventions or congresses which constituted the temporary **Early procedure** form of government; and Massachusetts alone (in 1780) adopted the method of procedure since commonly observed of electing delegates to a convention for the express purpose of framing a constitution, and afterwards submitting the instrument thus drafted to the people for approval.

The States which have been admitted to the Union since 1789 have entered it as organized self-governing communities, with constitutions already formed. When Congress decides to admit a territory to state- **Admission of new States** hood, it may pass an act empowering its people to hold a convention and enact a constitution; or Congress may accept and confirm a constitution previously drawn up by a territorial convention.

113. Amendment of State Constitutions. Three different methods have been evolved whereby State constitutions may be amended. (1) About two thirds of the States provide for amendment by a constitutional convention composed of delegates elected by the voters. (2) Another general method of amendment, found in all States except New Hampshire, is through legislative action subsequently ratified by popular vote. (3) Within the last decade several commonwealths have adopted a method of amendment entirely independent of the legislature, through the popular initiative and referendum.

114. Amendment by Constitutional Convention. The

convention method is universally employed when it is desired to adopt a new constitution to replace the existing one. Sometimes the State constitution itself provides for such conventions at regular intervals; and in seven commonwealths, the constitutions require a periodical vote of the people (once in seven, ten, sixteen, or twenty years) upon the question whether a convention shall be called. Elsewhere the initiative is left to the legislature, which may declare by vote or resolution in favor of a convention.¹ After notice by publication, a vote of the people is taken on the question of calling a convention, and the legislature then acts in accordance with the result of the popular vote. If the majority has been favorable, the legislature arranges for the election of delegates to the convention, ordinarily from districts throughout the State; and also fixes the time and place for the convention sessions. After the convention has completed its work, the common practice is to submit the new constitution to the voters for their approval or disapproval.²

115. Amendments proposed by Legislatures. Frequently, separate constitutional amendments are adopted which do not involve revision of the entire instrument. These are usually proposed by the legislature and then submitted to popular vote. In some States only a majority vote of the legislature is required for the proposal of amendments, but generally a special majority in each house is required, as two thirds or three fourths of the members. In several commonwealths amendments cannot be considered until they have been proposed by two successive legislatures. After the amendment is proposed, it must be ratified by the voters, special majorities of the popular vote being sometimes required.

¹ A majority of the States require a two-thirds vote of the members of both houses in order to pass such a resolution.

² Of one hundred and fifty-seven constitutional conventions down to 1887, one hundred and thirteen submitted their work to the people and forty-four did not. — Jameson, J. A., *Constitutional Conventions*, p. 496. Sometimes an absolute majority of all qualified voters is required for ratification; generally only a majority of the votes cast at the polls.

116. Amendment through the Initiative and Referendum.

A third method of amendment, that of the initiative and referendum, is found in several commonwealths. For example, in Oregon eight per cent of the legal voters may propose an amendment by petition. The proposal must be submitted to the voters, and if it receives a majority of all votes cast thereon, it becomes a part of the constitution. A somewhat similar method prevails in Oklahoma.

117. Authority of State Constitutions. The constitution together with its amendments constitutes the supreme or fundamental law of the commonwealth, to which all authorities, executive, legislative, and judicial, are subordinated. It is to be regarded as an organic law made by the people themselves acting through special conventions; and its high authority is owing to the fact that its enactment is a direct exercise of popular sovereignty. Hence the constitution overrides all minor State laws, and any act contrary to its provisions is null and void, and will be so declared by the courts if the act be drawn in question. On the other hand, the State constitution must not conflict with any provision of the federal constitution, or with any federal statute or treaty authorized under that instrument. If it is claimed that such a conflict exists, the ultimate decision will be made by the federal courts.

Supreme or
fundamental
law

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), pp. 344-350.
 Baldwin, Simeon E., *Modern Political Institutions* (1898), ch. III.
 Beard, C. A., *American Government and Politics* (1910), pp. 78-98, 445-460.
 ——— *Readings in American Government and Politics* (1910), ch. v.
 Black, H. C., *Handbook of American Constitutional Law* (1897), chs. I, III.
 Borgeaud, Charles, *Adoption and Amendment of Constitutions in Europe and America* (1893).
 Bryce, James, *The American Commonwealth* (1907), I, chs. XXXVII-XXXVIII.
 Cleveland, F. A., *The Growth of Democracy in the United States* (1898), ch. v.
 Cooley, Thomas M., *Constitutional Limitations* (1903), ch. III.
 Dealey, J. Q., *Our State Constitutions* (1907).
 Hart, A. B., *Actual Government* (1903), ch. III.
 Hitchcock, H., *American State Constitutions* (1887).

Jameson, J. A., *Constitutional Conventions* (4th ed., 1887).

Lalor, John J., *Cyclopedia of Political Science* (1881), I, "The Constitutional Convention."

Landon, Judson S., *The Constitutional History and Government of the United States* (1905), ch. IV.

McClain, E., *Constitutional Law in the United States* (1905), ch. II.

Phillips, J. B., *Recent State Constitution-Making*; University of Colorado Studies (1904).

Schouler, James, *Constitutional Studies* (1904), pp. 45-69.

Thorpe, F. N., *Constitutional History of the United States* (1901), I, pp. 166-184.

——— *The Federal and State Constitutions* (1909).

Woodburn, James A., *The American Republic and its Government* (1908), pp. 342-348.

QUESTIONS AND EXERCISES

1. When, by whom, and under what circumstances was the constitution of your State made?
2. Was it ratified by popular vote? Why should the people vote upon this question?
3. How many constitutions has your State had in all? Has any proposed constitution ever been rejected by the voters?
4. Does the present constitution of your State lack any of the parts named in Section 103?
5. If there is a bill of rights, make a list of the rights enumerated. Compare with those asserted in Magna Carta, the Bill of Rights (1688), the Declaration of Independence, and the Constitution of the United States.
6. Give reasons for the increased number of miscellaneous provisions inserted in recent State constitutions (Sec. 111). Compare the number and content of the miscellaneous provisions in your State constitution with those of a recent constitution, e. g., Oklahoma, and also with those of an older constitution, e. g., Massachusetts.
7. How many amendments have been added to your State constitution? Make an outline showing in a few words the general subject-matter of each amendment.
8. Compare the amendments of your State constitution with those of the constitution of some other State.
9. Describe in detail the method by which your State constitution may be amended, giving (a) the method of proposing amendments, and (b) the method of ratification.
10. Suggested readings on State constitutions: Kaye, P. L., *Readings in Civil Government*, pp. 261-281.

CHAPTER IX

THE STATE LEGISLATURE

118. **Composition of the Legislature.** The State legislature or general assembly invariably consists of two houses, the smaller of which is called the senate, the more numerous being styled the house of representatives, or assembly, or house of delegates.¹ The two houses have practically equal powers, differing chiefly in the number of members, in the length of their term, and in certain special duties imposed upon each branch. The average membership of the senate is about thirty, while the house of representatives is generally three or four times as large. A two-house body

For the purpose of electing members, the States are divided into as many senatorial and house election districts as there are members in the respective houses, the senatorial districts being considerably larger than the house districts.² In many commonwealths the county is the unit for districting, each county electing one or more members to the house, according to its population; while several counties are united into a single district to elect a senator. Election districts

An objection frequently urged against our method of electing legislators is that these officers represent not the entire body of voters, but the majority only. Various plans of securing minority representation have been proposed. One of these is the cumulative vote, which gives each elector as many votes as there are places to be filled, and allows him to distribute his votes as Minority representation

¹ Three States, Pennsylvania, Georgia, and Vermont, have experimented with legislatures consisting of a single house, but at present the two-house plan is universal.

² In New England (excepting Massachusetts), each town ordinarily elects one or more members of the lower house of the legislature.

he pleases.¹ By concentrating their votes upon one candidate, a large minority in any district is thus assured of representation.

119. The Members of the Legislature. Members of the legislature are chosen by voters possessing the qualifications as to age, citizenship, and residence prescribed by the State constitution. Several commonwealths also have an educational or property qualification. As a rule, a person eligible to vote is also eligible to membership; but holders of public office, State or federal, are generally disqualified from sitting in the legislature. In a few commonwealths, the age qualification for the Senate is higher than that for the house. In all States, either by law or custom, members must reside in the district from which they are elected.

Term and salary The term of a senator is generally longer than that of a representative, although in eighteen commonwealths it is the same. In two thirds of the States, senators are elected for four years, while the common term for representatives is two years.² In twenty-four States the senate differs from the house in being a continuous body, only half of its membership being renewed at one time. Senators and representatives receive the same compensation, either an annual salary or a *per diem* compensation based upon the length of the legislative session.

120. Organization and Procedure. The time for the meeting of the legislature is fixed either by the State constitution or by statute. Annual sessions, formerly the common practice, are now held in only six States;³ while elsewhere sessions are biennial.⁴ Special

¹ This is the method followed in Illinois in the election of members of the lower house of the legislature. Three representatives are chosen from each district, and the voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute his votes or equal parts thereof as he sees fit.

² Massachusetts and Rhode Island retain the old practice of annual elections for both senators and representatives; New York and New Jersey elect representatives annually.

³ Georgia, Massachusetts, New Jersey, Rhode Island, New York, and South Carolina.

⁴ Except in Mississippi and Alabama, where the regular meetings are held every four years.

sessions may be called by the governor if occasion requires, or the legislature itself may adjourn to meet later in special session. The length of the session is often restricted to forty or sixty days. In case the two houses fail to agree upon a time for adjournment, the governor may adjourn them. The legislature sits at the State capitol, or State house, each branch having its separate chamber.

The internal organization follows closely that of Congress. Each house chooses its own officers (except that the lieutenant-governor is frequently the presiding officer of the senate). In each house there is a ^{Procedure} body of standing committees, generally appointed by its presiding officer, and a group of party leaders who act as a steering committee. Some legislatures, following the procedure in Congress, have a committee on rules which determines the order in which measures shall be considered. Each house determines its own rules of procedure; exercises the exclusive right of deciding upon the election and qualifications of its members; keeps a journal or record of its proceedings; disciplines members for disorderly or contemptuous behavior, even to the extent of expelling them;¹ and punishes persons guilty of contempt of the house or breach of its privileges. The legislature has the power to compel the attendance of witnesses and the production of papers when necessary to obtain information in aid of legislation; or it may appoint committees and invest them with these powers.

During the sessions, members of the legislature are privileged from arrest on civil process;² and they ^{Privileges of members} also have the privilege of freedom of speech as to utterances made in the discharge of their official duties.

¹ A two-thirds vote is ordinarily required to expel a member.

² "The object of the privilege from arrest is to exempt members from being interfered with by judicial procedure while in the discharge of their duties. At other times and in other respects they are subject to the jurisdiction of the courts as fully as private persons. Indeed, the exemption is of little practical value, as arrest or seizure of the person is no longer generally authorized except for crime, and all crimes of a serious nature are included within the description of treason, felony, and breach of the peace." — McClain, E., *Constitutional Law in the United States*, p. 69.

121. The Enactment of Laws. No law can be passed except by bill, which may be defined as “a written draft of a proposed act of legislation.”¹ A bill may originate in either house (except bills for raising revenue, which under most constitutions must originate in the lower branch). Bills may be introduced by any member, or by a committee, or by a message from the other house.²

Upon introduction the bill is read (usually by title only), and referred to the appropriate standing committee. If favorably considered by the committee, it is printed and reported back to the house with such amendments as the committee may favor. The bill now receives its second reading,³ being read and debated section by section, and may be adopted, rejected, amended, referred back to the committee, or referred to the committee of the whole⁴ for further consideration. If the bill passes upon second reading, it is generally referred to the committee on revision. It is then engrossed, that is, copied in legislative script, after which it is reported back to the house for its third reading and final vote. Many constitutions provide that on the final vote on every bill, the yeas and nays shall be entered upon the journal. This provision is intended to fix upon each member his due share of responsibility for legislation, and also to furnish conclusive evidence of the passage of a bill by the requisite majority. Some constitutions provide that all bills, or all bills on certain subjects, must receive a majority vote of the members elected; otherwise, a simple majority of a quorum⁵ is sufficient.

After a measure passes one house, the engrossed copy is sent to the other house, where the same process is repeated. A measure which has passed one house

**Joint action
necessary**

¹ Black, H. C., *Constitutional Law*, p. 325.

² In all States the governor has power to recommend legislation in his message.

³ In some legislatures the second reading follows immediately after the first reading by title; but the constitutions of many States require separate readings on different days.

⁴ The committee of the whole is the entire house acting as a committee.

⁵ By a quorum is meant the number necessary to transact business — generally a majority of the members elected.

may be altered, amended, or rejected by the other; but to become a law, the same act must pass both houses in the same identical form. If the measure is amended, it must go back to the originating house. If this body does not concur in the amendments, an effort is made to reach an agreement through the appointment by each house of members of a conference committee. When a bill has passed both houses it is enrolled, then signed in open session by the presiding officer of each house, and presented to the governor.

122. The Governor's Veto. In all commonwealths except North Carolina, every bill which has passed both branches of the legislature must be submitted to the governor for his approval. If he signs the measure, it thereby becomes law; if not, he returns it with his objections to the house in which it originated, where the objections are entered at large upon the journal. Upon reconsideration the bill may become law notwithstanding the veto, provided it receives the votes of a sufficiently large majority (ordinarily two thirds of the members in each house). The governor generally has a period of ten days (excluding Sundays and holidays) in which to veto a measure. If he does not return the bill with his objections within this period, it becomes a law without his signature, unless the legislature by adjournment prevents its return. In a majority of the States the governor possesses the important power of vetoing particular items in an appropriation bill, while approving the rest of the measure.

Unless otherwise provided, an act becomes operative and in force from the time of its approval by the governor. In many cases statutes are passed to take effect either at the end of a stated period after approval, or on publication in a specified manner. The object of postponing the time of taking effect is to enable those affected by a statute to advise themselves of its provisions.

**Exercise of
veto power**

**When statutes become
operative**

123. Scope of State Legislative Power. The power of

the State legislature extends to every subject of legislation, unless in the particular instance its exercise is forbidden by some provision of the State or federal constitution. Unlike Congress, which possesses legislative authority only over enumerated classes of subjects, the State legislature possesses general powers of legislation. If the question arises whether the legislature has power to pass a certain law, the presumption is that it can do so; and some positive prohibition either in the federal or State constitution must appear to overcome this presumption.¹

The possible subjects of State legislation may be classified under three heads: —

(1) Ordinary private law, or the body of law which guides us in the every-day relations of life, as the law of contracts, domestic relations, property, torts, and crimes.

(2) Administrative law, or the law relating to the carrying on of government, to the raising and expending of revenues, and to the control of personal and property rights so as to secure the general welfare. This includes legislation concerning local government, public works, education, corporations, charitable and penal institutions.

(3) Local and special laws, or laws which apply to less than a class of subjects, as measures granting franchises to particular corporations, incorporating certain local communities, and the like.²

124. Non-Legislative Duties. Besides their power to make laws, State legislatures are charged with the important function of electing United States Senators, and in some commonwealths, of electing certain State officers. Generally, too, they may impeach

¹ On the other hand, every act of Congress must be traced for its authority to the national constitution; unless it can be affirmatively shown that the power to legislate in the particular instance is granted or implied by that instrument, it cannot be exercised.

² More legislation of the third class, local and special, is passed than of both the others together; and so excessive and objectionable has special legislation become that many States prohibit it altogether in regard to important classes of subjects.



NEW YORK STATE CAPITOL AT ALBANY



OHIO STATE CAPITOL AT COLUMBUS

Bill accompanying the petition of William T. Dunn and others for legislation to remove certain restrictions upon fishing in the waters of Buzzards Bay. Fisheries and Game. January 24.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Ten.

AN ACT

Relative to taking Fish in the Waters of Buzzards Bay.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The mayor and aldermen of the city of New Bedford and the selectmen of any town bordering on the waters of Buzzards bay, may issue written permits authorizing any person to construct, maintain and operate weirs, pound nets or fish traps, in the waters within the limits of such city or town, for a term not exceeding five years from the date of issue, in accordance with the provisions of this act.

SECTION 2. No weir, pound or trap shall be authorized the total length of which exceeds twelve hundred feet.

SECTION 3. Said permits shall state the location in which said weir, pound or trap is to be located, the date when said permit expires, and shall be signed by the mayor and at least two aldermen and by a majority of the selectmen of the town in which said permit is issued.

SECTION 4. A fee of five dollars shall be paid for each permit issued by the person to whom same is issued.

SECTION 5. Nothing herein contained shall be construed as authorizing the construction, operation or maintenance of floating traps, so called, or other movable apparatus.

SECTION 6. The provisions of section one hundred and twenty-one of chapter ninety-one of the Revised Laws, and of all acts or parts of acts inconsistent herewith, are hereby repealed.

SECTION 7. This act shall take effect upon its passage.

any State official for misconduct, the procedure in such cases resembling that in Congress.

125. Limitations upon Powers of State Legislatures. Although in theory State legislatures are invested with general authority to make laws, in practice their action is checked by important limitations. These limitations may be grouped under four heads: (1) those expressly imposed by the national constitution; (2) those implied from provisions of the national constitution, or from the nature of the relation between the States and the federal government; (3) those expressly imposed by the State constitutions; (4) those implied from the republican nature of State government.

126. Limitations imposed by the Federal Constitution. The express limitations imposed by the federal constitution upon the legislative power of the States may be grouped into two classes, with reference to the purpose for which they are imposed: —

To protect
domain of
national
government

(1) Restrictions designed to prevent the States from infringing upon the sphere of the national government. Thus no State may:

(a) Enter into any treaty, alliance, or confederation; or, without the consent of Congress, enter into any agreement or compact with another State or with a foreign power.

(b) Grant letters of marque and reprisal, or, without the consent of Congress, keep troops or ships of war in time of peace, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

(c) Coin money, emit bills of credit, or make anything but gold and silver coin a tender in payment of debts.

(d) Lay any duty of tonnage without the consent of Congress, or levy any duties on imports or exports, except what may be absolutely necessary for executing inspection laws.

(2) Restrictions designed to secure private and political rights from encroachment on the part of the States. Thus no State may:

To safe-
guard
private and
political
rights

(a) Pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

(b) Grant any title of nobility.

(c) Establish or allow slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted.

(d) Make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

(e) Deprive any person of life, liberty, or property, without due process of law.

(f) Deny to any person within its jurisdiction the equal protection of the laws.

(g) Assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave.

(h) Deny or abridge the right of citizens of the United States to vote on account of race, color, or previous condition of servitude.

127. Limitations implied from Federal Constitution.

The second class of limitations upon the legislative power of the States are those implied either from express provisions of the federal constitution, or from the nature of the relation between the States and the federal government.

Exclusive federal powers Thus in some cases the powers granted Congress are exclusive, either because so declared in express terms — as the power “to exercise exclusive legislation” over the seat of government; or because the subject-matter of the power is national in character, demanding a uniform system; for example, the power to establish a uniform system of naturalization.¹

128. Limitations imposed by State Constitutions. The express restrictions imposed by the State constitutions upon legislative power may be grouped into two classes: (1) restrictions upon the scope of legislative power, for example, forbidding all legislation on certain subjects;² (2) restrictions upon legislative procedure, that is, prescribing the forms to be observed in enacting laws.³

129. Limitations implied from the Nature of Republican Government. Even if not expressly stated in the constitution,

¹ Similarly the provisions defining the jurisdiction of the federal courts; securing to the citizens of each State all the privileges and immunities of citizens in the several States; requiring that each State give full faith and credit to the public acts, records, and judicial proceedings of every other State; enjoining interstate extradition; guaranteeing to each State a republican form of government, — all these provisions carry with them an implied prohibition of any State legislation which would impair their effectiveness.

² Examples of subjects frequently prohibited are: statutes inconsistent with democratic principles (favoring any religious denomination or granting titles of nobility); statutes against public policy (impairing the obligation of contracts, permitting lotteries); statutes which are private, local, or special in their nature (especially those designed to regulate the internal affairs of counties and municipalities); statutes increasing the State or local debt beyond a certain amount.

³ The following are illustrations of common restrictions upon legislative procedure: no law shall be passed except by bill, with a prescribed form for the enacting clause; appropriation bills must originate in the lower house; each bill must be read by sections on three different days; the final vote on each bill must be taken by yeas and nays; no bill shall embrace more than one subject, which must be clearly expressed in the title; no former act may be amended by reference to its title merely, without setting out its contents.

certain limitations upon legislative power would be implied by the courts as necessarily resulting from the nature of republican government. Thus from the principle of apportionment of powers among the three great branches of government, it follows that the legislature is entrusted with legislative power only, and may not usurp executive or judicial functions. Again, there are certain implied limitations upon legislative power as a result of the principle that the legislature is to be regarded as a trustee for the people.¹

130. Direct Legislation. By direct legislation is meant that in which the people participate directly, instead of acting through their representatives. The most common example is the **The referendum** referendum, by which legislative measures are submitted to popular vote for approval or rejection.² Early in our history it became an established principle that proposed constitutions or amendments should be referred to the voters for ratification. The referendum has since been employed to determine questions of ordinary legislation, as the incorporation of municipalities, the organization of counties and townships, location of county seats, incurring of indebtedness, granting of municipal franchises, and issuing of liquor licenses. The referendum affords a valuable check upon the action of State legislatures and municipal councils; and it also provides a certain means of determining whether proposed legislation is approved by public sentiment.

The logical complement of the referendum is the initiative, by which a certain percentage of the voters are empowered to propose measures which must subsequently, with or without the intervention of the legislature, be submitted to **Initiative** popular vote. For example, the constitution of Oregon provides that any legislative measure may be initiated by a petition bearing the signatures of eight per cent of the voters, and containing the proposed measure in full. The petition must be filed with the Secretary of State at least four months before election day; and if approved by a majority of all those voting upon it at the election, the measure becomes a law.³ The initiative and referendum in

¹ Hence legislative power may not be delegated to any other body or person, but must be exercised by the legislature itself; nor can public property or governmental powers (as taxation and police powers) be surrendered to private persons. Public money raised by taxation can be appropriated and expended only for public purposes. Nor can the legislature pass any law which may not be repealed by a subsequent legislature, unless the act take the form of a contract founded upon a consideration.

² "The referendum is a plan whereby a small percentage of the voters may demand that any statute passed by the legislature (with the exception of certain laws) must be submitted to the electorate and approved by a stipulated majority before going into effect." — Beard, C. A., *American Government and Politics*, p. 463.

³ A recent Oregon statute provides for the publication and distribution of arguments for and against the propositions thus submitted to the voters for decision.

some form have been adopted by nine commonwealths, including Oregon, South Dakota, Idaho, Delaware, Missouri, Montana, Utah, Maine, and Oklahoma.

GENERAL REFERENCES

- Andrews, Jas. DeWitt, *American Law* (1900), pp. 435, 476.
 Ashley, R. L., *The American Federal State* (1903), ch. xviii.
 Beard, C. A., *American Government and Politics* (1910), ch. xxv.
 ——— *Readings in American Government in Politics* (1910), ch. xxv.
 Black, H. C., *Constitutional Law* (1897), ch. xiii.
 Bryce, James, *The American Commonwealth* (1907), I, chs. xl, xliv, xlv.
 Cleveland, F. A., *Growth of Democracy* (1898), chs. viii–xv.
 Commons, John R., *Proportional Representation* (1907).
 Cooley, Thos. M., *Constitutional Limitations* (1903), chs. v–vi.
 Forman, S. E., *Advanced Civics* (1905), ch. xxii.
 Hart, A. B., *Actual Government* (1903), ch. vii.
 Holst, H. E. von., *Constitutional Law of the United States of America* (1887), pp. 267–285.
 McClain, E., *Constitutional Law* (1905), chs. v, viii.
 Oberholtzer, E. P., *The Referendum in America* (1900).
 Ordronaux, J., *Constitutional Legislation* (1893), ch. x.
 Reinsch, P. S., *American Legislatures and Legislative Methods* (1907), chs. iv–x.
 Roosevelt, Theodore, *American Ideals* (1899), no. v.
 Schouler, J., *Constitutional Studies* (1904), pp. 249–266.

QUESTIONS AND EXERCISES

1. What is the official name of your State legislature? Of each house? How many members in each house? What are the qualifications for membership?
2. Give arguments for and against the requirement that a member must be a resident of the district which elects him.
3. Draw an outline map of your State, and mark with different colors the boundaries of your State representative district, and of your State senatorial district.
4. Is the division of your State into senatorial and representative districts an equitable one? Or has the gerrymander been employed to give one party an undue advantage?
5. Examine the provisions of your State constitution concerning the number and apportionment of senators and representatives. How often and under what restrictions may the legislature change this apportionment?
6. For what term are members of your legislature chosen? What salary do they receive? Is the senate a continuous body?
7. Does your district frequently return the same members to the legislature, or is rotation in office customary? Who are the present members from your district? To which political party do they belong? Which party has a majority in your legislature?
8. How often does your legislature meet? Is the length of the session limited by the constitution?

9. Name the officers of each legislative house. Principal duties of each?
10. Discuss the position of the speaker of the lower house, and compare his influence upon legislation with that of the lieutenant-governor.
11. Who are the leaders of the majority party in your legislature? Of the minority party?
12. How many committees in each branch of your legislature? Name the most important ones.
13. Discuss the advantages and defects of the committee system.
14. Describe the steps by which a bill is enacted into law in your State. Compare with the procedure described in Section 121.
15. What constitutes a quorum in each house of your legislature? How many votes are necessary in each house to pass a bill the first time? Over the governor's veto?
16. Organize your class into a house of the State legislature, and draw up and pass a bill in due form. (If possible obtain the assistance of your local representative.)
17. Make a list of the chief subjects with which your State legislature may deal. Compare this with the list of subjects over which a city council or town meeting has authority.
18. Examine the volume of laws passed at the last session of your legislature, and make an outline showing ten different subjects of legislation concerning which laws were passed.
19. What are the special powers of each branch of your State legislature?
20. Make a list of the most important limitations on legislative powers imposed by your State constitution. Pay especial attention to (a) limitations upon financial powers; (b) restrictions upon local or special legislation; (c) regulation of legislative procedure.
21. What is meant by the "lobby"?
22. Give reasons for the growing popularity of the initiative and the referendum. (Kaye, P. L., *Readings*, pp. 295-303.) Is either of these forms of direct legislation employed in your State or county?
23. What officer attends to the publication of the laws passed by each legislature? What volumes would you examine to ascertain the law of your State upon any subject?

CHAPTER X

THE STATE EXECUTIVE

131. Contrast between State and Federal Executives.

The organization of the executive department of the State government differs materially from that of the federal executive. In the national government, executive power is vested in a single individual, the President of the United States. He alone is an elective officer, other executive officials being appointed by and responsible to him.

Federal
executive
power cen-
tralized

But in the State governments, executive power is vested in a number of elective and appointive officers who, together with the governor, share the executive power. The secretary of state, auditor, treasurer, and attorney-general are, like the governor, elected by the people; and they are as independent of him as is the legislature. In fact they are the governor's colleagues, not his agents or subordinates. Nor is the executive power vested solely in the governor and other principal State officers; for the actual execution of the laws does not rest with them, but with local officers chosen by the towns, counties, and municipalities. These local officials, including sheriffs and other county officers, town and city officials, are not ordinarily subject to State supervision, much less to immediate State control. They hold themselves accountable not to the State as a whole, but only to their part of the State. Hence State administration is decentralized; and the governor is not, like the President, directly and exclusively responsible for the execution of the laws.

State execu-
tive powers
distributed

132. Election and Term of the Governor. The governor

is everywhere elected directly by popular suffrage, the earlier method of choice by the legislature having been discarded. In most commonwealths the election for governor and other State officials is held on the Tuesday immediately following the first Monday in November. The term of office is either two or four years in nearly all of the States.¹ Popular governors are often reëlected in commonwealths having the shorter terms, while elsewhere reelection is less frequent. The constitutions of seven States prohibit the governor from serving two successive terms.

133. Qualifications and Salary. The constitutional qualifications for governor generally relate to age, residence, and citizenship. These qualifications vary widely, those most frequently prescribed being thirty years of age, five years of residence, and the same period of citizenship. The average salary of the governor is about \$5000.

134. Administrative Powers and Duties. As his foremost administrative duty, the governor is to take care that the laws are faithfully executed; but in the performance of this comprehensive duty his power is limited by the fact that the execution of the laws is largely entrusted to State and local officials over whom he has slight control. "If he is of much force in the government of the State, it is because of his strong character. He is a passenger on board the ship, which is navigated by a crew which he does not select, and over which he has few powers of command."²

However, the governor has a general supervisory power over the executive officers of the State; he may investigate their conduct of business and require information upon subjects relating to the duties of their respective offices. Furthermore, he has the power of appointing the less important State officers (confirma-

Duty to enforce laws

Supervisory and appointive powers

¹ Twenty-two States fix the governor's term at four years, twenty-one at two years. In New Jersey the term is three years, while Massachusetts and Rhode Island adhere to annual elections.

² Landon, J. S., *The Constitutional History and Government of the United States*, p. 63.

tion by the Senate being frequently required); and in some commonwealths he has a limited power of removal.¹ When an elective State office becomes vacant, the governor appoints some one to serve until the next election.

The governor is commander-in-chief of the State militia,² and may call them out to repel invasion, or to suppress riots, insurrection, or disorder. The military authority of the governor is invoked by the sheriff or the mayor when local resistance to the law becomes too powerful to be suppressed by the means at his disposal.

Military powers **Legislative powers**

135. **Political Duties.** More important than the foregoing administrative powers are the governor's political duties, especially those in connection with legislation. At the beginning of the session he transmits to the legislature a message calling attention to measures which he deems necessary. If urgent matters demand immediate consideration, he may summon the legislature to meet in special session; and he may adjourn that body in case the two houses are unable to agree upon a time for adjournment. Finally, in all States except North Carolina, the governor has a qualified veto upon all legislative acts, and in twenty-eight commonwealths he may veto particular items in appropriation bills. Thus the governor exercises a large influence upon legislation, since only in exceptional cases is a bill likely to pass over his veto.³

Almost universally the governor has the power to grant pardons and reprieves in case of offenses committed against the State. A pardon discharges the individual from all or some of the consequences of his crime; while a reprieve suspends execution of the sentence for a specified time. In some commonwealths the governor may

¹ Generally the exercise of this power is conditioned upon obtaining the consent of the senate or council, and upon the finding of cause (malfeasance in office or neglect of duty). In New York and a few other States, the governor is permitted to remove even local officers under certain conditions. In Colorado, Maryland, Illinois, Nebraska, and Pennsylvania, he may remove those officers whom he appoints.

² Except when in the actual service of the United States.

³ Generally a two-thirds or three-fifths vote is required to pass a bill over the governor's veto. In Connecticut, Vermont, New Jersey, and Indiana, a simple majority is sufficient.

exercise this power only in conjunction with a board of pardons.

136. State Governors under the Federal Constitution. The duties of the governor of a State are regulated to some extent by the federal constitution. For example, ^{Powers and duties} a person charged with crime who escapes to another State must be delivered up to the executive authority of the State from which he fled, upon the demand or requisition of its governor.¹ Again, the United States is bound to protect each State against domestic violence upon application from its legislature; and if the legislature cannot be convened, the governor may call for such assistance.² Finally, if vacancies happen in the United States Senate by resignation or otherwise during the recess of the State legislature, the governor may make a temporary appointment until the next meeting of the legislature, which then fills the vacancy.³

137. Other Principal Executive Officers. Other important executive officers are the lieutenant-governor (in thirty-four States); the secretary of State, and the treasurer (in all States); the comptroller or auditor, the attorney-general, and the superintendent of public instruction (in nearly every State). Ordinarily these officers are chosen by the voters at the general State election; but in several commonwealths certain important executive officers are appointed by the governor or elected by the legislature. Their term varies from one to four years, frequently being the same as that of the governor.

The principal executive officers are not under the direction or control of the governor or the legislature. Their duties are prescribed in the State constitution, ^{Relation to governor and legislature} and for their official acts they are responsible only to the people and the courts. They do not constitute a cabinet responsible to the chief executive as in the

¹ *United States Constitution*, Art. IV, Sec. 2.

² *Ibid.*, Art. IV, Sec. 4.

³ *Ibid.*, Art. I, Sec. 3.

presidential system of the national government, or a ministry responsible to the legislature as in the parliamentary system of European governments.¹

138. The Lieutenant-Governor. The lieutenant-governor is generally president of the State senate, with a casting vote in case of a tie. He succeeds the governor in case of the latter's death, resignation, removal, or disability.

139. The Secretary of State. The secretary of State has charge of all State records, and of the seal of the commonwealth by which State documents are authenticated. He publishes the laws of the State; registers the official acts of the governor; certifies the incorporation of all companies; draws up commissions to public officers; takes charge of the returns of elections; and collects and publishes statistics.

140. State Auditor or Comptroller. The State auditor or comptroller is the public accountant charged with supervision of the State's financial business. He examines and passes upon all claims presented against the commonwealth; and no money can be paid out of the treasury except upon a warrant issued by him. He prepares for the legislature estimates of revenues and expenditures; audits the accounts of all officers charged with the collection of revenue; sees to it that such officers are under sufficient bond; and enforces payment of moneys withheld or uncollected. He keeps a record of all moneys paid into the treasury, and of all appropriations and warrants; and since his books must tally with those kept by the treasurer, his office serves as a check upon the latter.

141. The State Treasurer. The treasurer receives all State funds, for which he issues receipts, and disburses them only upon warrants signed by the auditor. At stated intervals he is required to publish state-

¹ Ordinarily State executive officers may be removed from office for cause by a two-thirds vote of the legislature, or by impeachment in the lower branch followed by trial and conviction by the senate (a two-thirds vote being commonly required).

ments of balances, and his books, like those of the auditor, are at all times open to inspection. Both treasurer and auditor are often *ex officio* members of various financial boards.

142. The Attorney-General. The attorney-general is the legal adviser of the governor and other officers, and he also represents the commonwealth in all civil and ^{State's} criminal cases to which the State is a party. Es- ^{attorney}pecially is it the duty of this officer, aided by the district prosecuting attorneys or solicitors, to watch over and protect the constitution of the State from encroachment by the government or violation by individuals. The numerous cases in the courts entitled *State ex rel. v. —*, or *People v. —*, are the mediums through which the attorney-general and prosecuting attorneys attack offenders against the constitution and the laws. These proceedings generally take the form of prosecution by *indictment* for criminal offenses; or *mandamus* to compel the performance of official or other public duties; or *quo warranto* to try the right to exercise a public office or franchise; or *information* or *bill in equity* to vindicate the rights of the State or of the general public.¹

143. State Superintendent or Commissioner of Schools. The superintendent of public instruction, some- ^{Supervision} times known as the commissioner of public schools, ^{of education} exercises a general supervision over the public school system. In the commonwealths having State boards of education, he is generally an *ex officio* member of that board.

144. Appointive Officers of State Administration. In addition to these elective officers, a large number of appointive officials are charged with special administrative duties. Most of these are appointed by the governor (generally with the consent of the senate) for terms varying from one to four years; and they are ordinarily subject to removal by the appointing power. Among the most im-

¹ In this way the great Pullman Company was checked in its growth as a municipal corporation and compelled to sell the town of Pullman. — *People v. Pullman Car Co.*, 175 Ill. 125.

portant of these officials, some of whom at least are found in every commonwealth, may be named: adjutant-general; State surveyor; geologist; fire marshal; librarian; factory inspector; engineer; tax commissioner; superintendent of public printing; commissioner of banking; insurance commissioner; superintendent of weights and measures; commissioner of immigration; commissioner of agriculture; commissioner of mines and forests; food and dairy commissioner; superintendent of public works; superintendent of prisons.

145. State Boards or Commissions. In addition to these individual officers, a large share of administrative business is entrusted to State boards or commissions.¹ These
Composition are generally appointed by the governor with the consent of the senate, for terms varying from four to eight years. Members are sometimes paid, especially when they give a large part of their time to the service; frequently they serve without pay, and elect an executive officer who receives a salary, and upon whom the greater part of the work devolves. The legislature often endows these boards with large powers, in the exercise of which they are practically free from executive control.

146. Civil Service Reform. Early in the nineteenth century the "spoils system" was extensively applied in filling
The spoils system State as well as federal offices, these positions being made the reward for successful electioneering and wire-pulling. Throughout the greater part of the Union the same system is still employed in filling appointive State offices, and frequently the main issue in political campaigns is the question which party shall control the patronage. Standards of service have been adopted which would not be tolerated in any successful private business. Tenure of office is often dependent not upon faithful devotion to public duty, but upon compliance with private instructions from the "regular organization."

¹ For example, boards of agriculture, health boards, railway commissions, boards of education, examining boards in the professions of law, medicine, etc.

To remedy the evils of the spoils system three States, New York, Massachusetts, and Wisconsin, have adopted a system of civil service reform similar to that now employed by the federal government. The object of this merit system is threefold; first, to exclude ignorant and incompetent persons who have nothing to recommend them save political influence; second, to assure intelligent and competent persons an equal opportunity to secure public employment; and third, to make tenure of office secure for competent officials. To attain this end, the three commonwealths named have established a system of competitive examinations, practical in character; political and religious interrogatives have been prohibited; assessments upon office-holders are forbidden; and tenure and promotion are made to depend upon ascertained merit, rather than upon political influence.

GENERAL REFERENCES

- Andrews, James DeWitt, *American Law* (1900), pp. 477-485.
 Ashley, R. L., *The American Federal State* (1903), pp. 356-359.
 Beard, C. A., *American Government and Politics* (1910), ch. xxiv.
 ——— *Readings in American Government and Politics* (1910), ch. xxiv.
 Black, H. C., *Constitutional Law* (1897), pp. 267-279.
 Bryce, James, *The American Commonwealth* (1907), I, ch. xli.
 Cooley, Thos. M., *Constitutional Limitations* (7th ed., 1903), pp. 218-222.
 Finley, J. H., and Sanderson, J. F., *The American Executive and Executive Methods* (1908), pp. 1-184.
 Fiske, John, *Civil Government* (1904), pp. 175-179.
 Forman, S. E., *Advanced Civics* (1905), ch. xxiii.
 Goodnow, F. J., *Comparative Administrative Law* (1893), I, 74-82.
 Hart, A. B., *Actual Government* (1903), ch. viii.
 James, J. A., and Sanford, A. H., *Government in State and Nation* (1903), ch. iii.
 McClain, E., *Constitutional Law* (1905), pp. 197-212.
 Schouler, James, *Constitutional Studies* (1904), pp. 267-282.
 Wilson, W., *The State* (1906), secs. 1174-1208.

QUESTIONS AND EXERCISES

1. Give the term, qualifications, and salary of the governor of your State.
2. Is the governor of your State reëligible for a succeeding term? If so, is reëlection customary?
3. Are candidates for governor in your State nominated at primaries or by conventions? When does the State election occur?

4. Who were the candidates for governor at the last election? What was the plurality of the successful candidate?
5. What officers may your governor appoint? Is the consent of the Senate necessary?
6. What powers of supervision may your governor exercise over State officials? Has he power to remove any officials? If so, under what circumstances?
7. What vacancies in judicial, county, or State offices may be filled by the governor in your State?
8. Examine the provisions of your State constitution concerning the governor's legislative powers, including his power (a) to convene the legislature in extra session, and to adjourn it under certain conditions; (b) to recommend legislation; (c) to veto legislative acts.
9. How may the governor's veto be overcome in your State?
10. May your governor veto items in an appropriation bill?
11. What power has he over pardons and reprieves? Is the consent of a board of pardons or other body required?
12. Has the governor of your State had occasion to call out the militia within recent years? If so, under what circumstances?
13. In general, would you say that the governor of your State exercises large or small powers over legislation and administration?
14. Secure a copy of a message issued by your governor; of one of his proclamations. What subjects are covered by each?
15. Who would succeed the governor in the event of a vacancy in this office?
16. In most commonwealths the seven principal executive officers are the governor, lieutenant-governor, secretary of State, treasurer, auditor or comptroller, attorney-general, and superintendent of education. Prepare an outline giving the following facts concerning each of these officers in your State: how chosen, term, qualifications, salary, duties and powers, how removed.
17. Which of the minor administrative officials mentioned in Section 144 are found in your State?
18. Prepare a list of the most important boards and commissions of your State. State concerning each, how chosen, term, and functions.
19. "In general, State laws are administered by local officials over whom the governor has no control." — Illustrate by giving examples in the government of your own State. State the advantages and disadvantages of this decentralized system of administration.
20. "In certain fields there is a marked tendency to develop a system of supervision over local officials by enlarging the powers of State boards of education, charities and corrections, and public health." — Is this true in your State?
21. State the advantages and defects of State boards or commissions.

CHAPTER XI

THE STATE JUDICIARY

147. Development of Colonial Courts. In the early colonial period, the legislative assemblies of the various colonies exercised many judicial powers, acting as the early English parliaments, both as legislatures and as courts. During the century immediately preceding the Revolution, the assemblies were deprived of their judicial powers, and the colonial courts correspondingly strengthened. Gradually a judicial system was evolved, patterned largely after that of Great Britain, and consisting of several courts arranged in a progressive series.

From the highest colonial courts, cases of importance could be appealed to the English Privy Council; and this appeal was of especial importance in regard to colonial legislation deemed inconsistent with the laws of England. The Privy Council from time to time set aside colonial statutes and reversed the judgments of colonial courts.¹ This was the germ of the power of our supreme courts to decide upon the constitutionality of legislation.

148. The Common Law. The larger part of the law administered by colonial tribunals was the common law of England, modified by the legislative assemblies and by the courts themselves so as to conform to conditions in the new world. The English common law (known also as customary or unwritten law) “is that rule of civil conduct which originated in the common wisdom and experience of society, in time became an established custom, and has finally received judicial sanction and affirmance in the decision of the courts of last resort.”² This law has been interpreted and largely developed by the courts, and is evidenced chiefly in their decisions of cases tried before them.

From the first the American colonists claimed the common law as their birthright, so far as it was applicable to their condi-

¹ The Judicial Committee of the Privy Council to-day exercises similar powers with reference to the British colonies.

² Robinson, W. C., *Elementary Law*, p. 2.

tion;¹ and upon the original foundation of the English common law the whole system of American jurisprudence has been built.

American common law Except as modified by constitutional or statutory enactments, the English common law, now become the American common law through adaptation to our circumstances, state of society, and form of government, is to-day in force in the several States; and it constitutes by far the greater portion of that body of law by which rights are adjudged and wrongs redressed.

Origin **149. Equity.** Equity is synonymous with justice, and originated in the deficiencies of the ancient common law. From the time of the Norman-French conquest of England (1066), the king was held in legal theory to be the fountain of justice; and he was often petitioned to interpose between private individuals in cases where the regular law courts could grant no remedy, or no adequate remedy. These petitions the king referred to his Privy Council, and ultimately they were addressed directly to one member of that body called the chancellor. Thus if the legal title to land had been conveyed to one individual for the use of another, and the holder of the title refused to recognize the beneficial interest of the other, the chancellor could bring him to account, although the law would give no remedy. Soon whenever a man had justice on his side, but not law, it was deemed a case for the chancellor, and his jurisdiction expanded accordingly.

Equity relief At common law one could recover money only, or specific real or personal property; but the chancellor could grant such relief as seemed equitable — hence called relief in equity. Finally, a distinct set of chancery or equity courts came into existence, with special procedure² and remedies.

Fusion of law and equity The chancery system thus created was introduced in America along with the common law; and at first, as originally in England, it was administered by separate courts. At the present time in most American commonwealths, equity is administered by the same judges who preside over the regular law courts.³ Legal and equitable causes of action may generally be joined, and legal and equitable relief given in one suit.

¹ One great excellence of the common law is the protection which it affords to individual rights. Hence when difficulties arose between the colonies and the mother country, the colonists appealed to the principles of the common law, and claimed that the king and parliament were seeking to deprive them of privileges which were their birthright as Englishmen.

² Courts of equity differed from the law courts in the mode of proof and of trial. In courts of equity, testimony was written instead of oral, and the judges decided questions of fact as well as of law, thus eliminating the jury.

³ Separate equity or chancery courts exist in New Jersey, Delaware, Tennessee, Alabama, and Mississippi.



SPOKANE COUNTY COURTHOUSE, SPOKANE, WASHINGTON

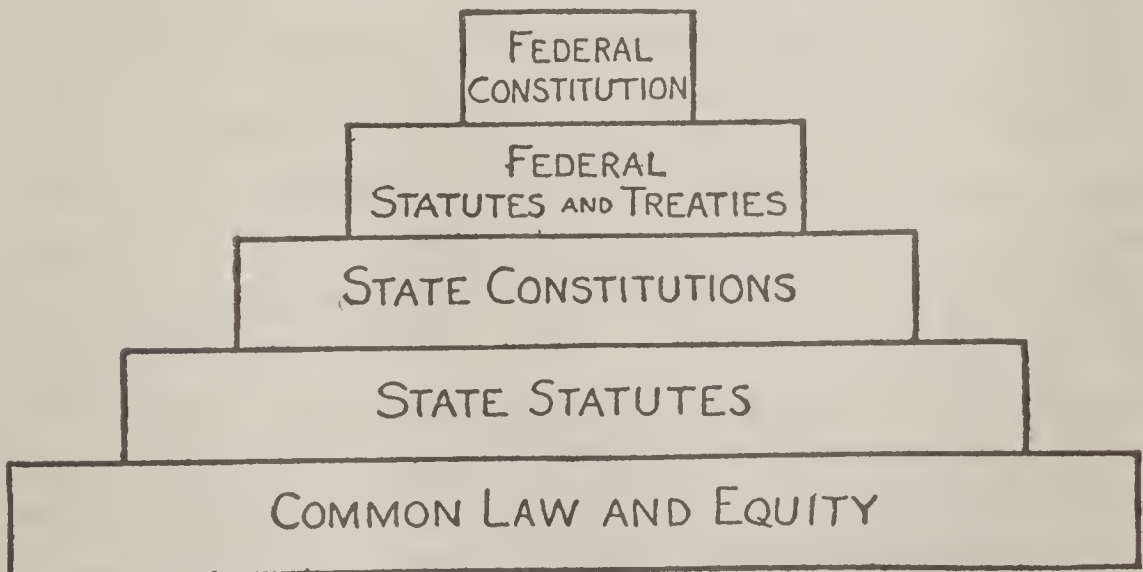


(By courtesy of Hugh C. Leighton Co., Portland, Me.)

CUMBERLAND COUNTY COURTHOUSE, PORTLAND, MAINE

150. **Our System of Law.** We have seen that the first great source of our body of law is the English common law: the second important source consists of the statutes enacted by the State legislatures. Most legislative measures belong to the branch of administrative law, relating to the structure and functions of government; but many statutes are passed affecting private law. Such are the laws relating to wills and the succession of property, marriage and divorce, corporations, partnerships, and crimes. Civil and criminal procedure is commonly regulated by statute, and a few commonwealths have gone even further, and attempted to codify the entire body of common law.¹

The State constitution is still another source of the law enforceable in the State courts. Next come the federal statutes and treaties; and finally, the source of supreme and controlling authority is the federal constitution, with which all other laws must accord.



OUR SYSTEM OF LAW

151. **System of State Courts.** The judicial power of each State is to-day vested in a system of courts generally

¹ Including Louisiana, California, North Dakota, and South Dakota.

comprising three grades: first, inferior courts, or those of lowest grade; second, courts of general original jurisdiction;¹ and third, courts of last resort.

152. Inferior Courts. Inferior courts include those of justices of the peace, and police or other city courts.

Justices' courts Justices of the peace have original jurisdiction over minor civil cases; for example, where the amount involved does not exceed a certain small sum (generally \$100), and where the title to real estate is not drawn into controversy. In some commonwealths, justices of the peace try petty offenses, such as breaches of the peace; while in the more serious criminal cases they may cause the arrest of persons charged with crime, and if there is *prima facie* evidence of guilt, bind over the accused to await the action of the grand jury.²

In large cities the civil and criminal jurisdiction of justices of the peace is ordinarily divided between two sets of **City and police courts** courts: the municipal or city courts, which exercise a minor civil jurisdiction; and police or magistrates' courts, which try petty criminal offenses, and make a preliminary investigation in case of felonies or serious misdemeanors.

153. Courts of General Original Jurisdiction. The second grade of State courts embraces those of general original jurisdiction,³ civil and criminal, over all suits, actions, and judicial proceedings (so far as this jurisdiction is not restricted by law). These are the ordinary courts for the trial of civil and criminal actions, and in them most of the judicial activity of the State is centered. In some commonwealths, courts of this class have appellate jurisdiction from the inferior justices' or municipal courts.

¹ Original jurisdiction is the power to hear or decide a legal controversy, or to administer a remedy, in the first instance. Appellate jurisdiction is the power to review the decision of some other court.

² If the grand jury finds that there is not sufficient evidence against the accused to warrant holding him for trial, he is discharged; if the contrary is the case, he is formally charged with the crime in an indictment, whereupon he must stand trial.

³ In different States this tribunal is known by different names, as the circuit court, district court, superior court, court of common pleas, etc.

154. Courts of Last Resort. The third and highest class of State tribunals is the supreme court, known also as the court of appeals, or court of errors and appeals.

The supreme court¹ is the court of last resort in which the supreme judicial authority of the State is vested. This court usually sits at the State capitol. The number of judges ranges from three to nine, whereas a court of the first or second grade is ordinarily presided over by a single justice or judge. As a rule the principal business of the supreme court is to review the decisions of courts of the first and second grade in cases carried up on appeal or writ of error, and to determine whether the judgment of the lower court is to be sustained or reversed.² Its decisions are final and binding upon all persons within the State; but in exceptional classes of cases (where a federal law, treaty, or the federal constitution is involved), its decisions may be reviewed by the Supreme Court of the United States.

**Jurisdic-
tion and
authority**

155. Special State Courts. In order to lighten the work of the court of last resort, several commonwealths, including Illinois, Pennsylvania, Louisiana, and Missouri, have established between the courts of the second grade and the supreme court an intermediate court of appeals. This tribunal has appellate jurisdiction only, and its decisions are final in all except certain classes of cases, which may be carried up to the supreme court.

**Intermed-
iate courts
of appeal**

Most of the States have provided special courts (generally one for each county), variously called probate courts, surrogates' courts, orphans' courts, or courts in ordinary. These tribunals are vested with jurisdiction over the probate of wills, appointment of

**Probate or
surrogates'
courts**

¹ In several States, including New York, New Jersey, and Kentucky, the so-called supreme court is not supreme in fact, since above the supreme court is a court of appeals to which certain cases may be taken. The latter is therefore the actual supreme court.

² This court also has power to issue prerogative writs and to grant extraordinary remedies, such as writs of *habeas corpus*, *mandamus*, *quo warranto*, *injunction*, *certiorari*, and writs of error.

administrators and guardians, care of the estates of wards,¹ and settlement of the estates of decedents.

156. Choice of State Judges. Under the first State constitutions, the selection of judges was generally entrusted either to the legislature or to the governor; but during the first half of the nineteenth century the choice of judges by popular vote became established as the general practice.² Supreme court justices are now generally elected by the voters of the commonwealth at large; ³ while circuit, district, and county judges are chosen by the voters of the area included within the jurisdiction of the court.

157. Tenure of State Judges. Judges of the supreme court have practically a life tenure in only three States, Massachusetts, New Hampshire, and Rhode Island; while elsewhere they are chosen for a fixed term of years, varying from two in Vermont to twenty-one in Pennsylvania.⁴ The average constitutional term is about eight years, but reelection is frequent, so that the period of actual service is longer. The term of judges of the lower courts generally varies with the grade of the court, being especially short in case of justices of the peace. Like other commonwealth officers, judges may be removed through the process of impeachment.

158. Salary and Qualifications. Only nine States pay the judges of their highest courts more than \$5000, the average salary being about \$4500.⁵ Salaries of judges of lower courts are considerably less than those of supreme court

¹ Including minors who are orphans, the insane, and others deemed by the law incompetent to manage their own estates.

² Judges are now elected by popular vote in thirty-four States; by the legislature in four (Rhode Island, Vermont, South Carolina, and Virginia); appointed by the governor in seven (Massachusetts, Maine, New Hampshire, Connecticut, Delaware, Mississippi, and New Jersey); while in Florida judges of the supreme court are elected by the people, and superior court judges nominated by the governor.

³ Sudden changes in the composition of the supreme court are prevented by providing that the term of only a few judges shall expire at the same time.

⁴ Eighteen commonwealths have a term of six years, seven of eight years; five States, including California, Delaware, Louisiana, Virginia, and West Virginia, have a twelve-year term; while in New York the term is fourteen years, and in Maryland fifteen.

⁵ The chief justice generally receives five hundred dollars more than the associate justices.

justices. The constitutions of most States provide that the salaries of judges may not be increased or diminished during their term of office.

The qualifications required for judges include a minimum age of twenty-five to thirty-five years, citizenship for a varying period of years, and residence within the State or judicial district. Comparatively few constitutions require judges to be members of the legal profession, although this qualification is prescribed by custom except for justices of the peace.

159. Subordinate Officers of Courts. The subordinate officers of State courts are the recording officer or clerk, the executive officer (sheriff or constable), and the attorneys. The clerk or prothonotary keeps the record of all judicial proceedings, has charge of the seal of the court, and issues all writs. This officer is generally appointed by the court or elected by popular vote.

The executive officer of inferior courts is the constable, and of the higher State courts, the sheriff. These officers are elected by the voters of the township or county, respectively, and are charged with the execution of all orders, judgments, and decrees of their respective courts.

Litigation is ordinarily conducted by men educated in the profession of law, known as attorneys. Before being admitted to practice, these officers must pass a satisfactory bar examination conducted under the authority of the supreme court. The government's cases are conducted by the attorney-general (representing the commonwealth as a whole), and by prosecuting attorneys or solicitors in each county.

160. The Protection of Rights. The jurisdiction of State courts extends to all classes of cases, civil and criminal,¹ except as limited by provisions of the State or federal constitution. The chief purpose for which

¹ For the criminal jurisdiction of State courts see chapter XIII.

State governments exist is the protection of individual rights, including personal rights (of life, reputation, personal liberty, and bodily security); rights of property, or the free use and enjoyment of those things justly acquired; and contract rights, or the enforcement of legal agreements which one person has with another.

To deprive any person of a right which the law grants him is a legal wrong, rendering the offender liable to prosecution in court — “the place where justice is legally administered.” Thus the person who suffers a legal wrong has the whole force of government at his disposal to secure redress, for the judgment of the court will be enforced by the executive authority of the State.

Legal wrongs are of two classes, public and private. If a wrong is committed primarily against a private person, it is known as a private wrong or tort; but if it reaches beyond the individual and affects the community at large, it is a public wrong or crime, and will be redressed by government in a criminal proceeding. To constitute a private wrong, an action must be wrongful in itself, that is, not authorized by law; and it must result in actual or legal damage. The person whose rights have been invaded by a wrongful and injurious act may bring a civil action or suit before the proper court, requesting compensation for his injury.

161. Procedure in Civil Cases. The parties to a civil action are the plaintiff and the defendant. The plaintiff is the party who claims to have sustained the injury and who brings the action; and the defendant is the one against whom the action is brought.

The first step is the filing of the plaintiff's statement of the grounds of his suit, this being known as his declaration, complaint, or petition. The plaintiff must apply to the clerk of the court for a writ summoning the defendant to appear in court and meet the charges made against him. This summons is served on the defendant by the sheriff or constable.¹ The clerk also issues a summons or *subpoena* to all wit-

¹ At the time required in the summons the defendant must plead, or judgment by default may be taken against him.

nesses whose testimony is desired by either party. The defendant then files his reply or answer, setting up any defense which he may have to the allegations made against him.¹ The plaintiff may reply to this, and the defendant may then answer in turn until an issue is reached, that is, "some specific point of law or fact affirmed on one side and denied on the other."

As a rule either party in a civil case may demand a trial by jury,² which generally consists of twelve men. The **Selection of the jury** method of selecting a jury is carefully regulated by law, and by "challenges" either party may secure the rejection of objectionable persons.

After the selection of the jury, the plaintiff's counsel states the nature of the case as set forth in the declaration, and outlines the main facts which he expects to prove. The **Evidence and argument** plaintiff's witnesses are next examined orally, the defendant being given an opportunity to cross-examine each witness after his direct testimony has been given. When the plaintiff's case has been presented, his attorney announces that he "rests." The defendant's attorney then outlines what he proposes to prove and introduces his evidence, at the close of which the plaintiff has an opportunity to introduce rebutting testimony. Only that evidence is admissible which, in the opinion of the judge, is material and relevant to the case. When the testimony is closed, the cause is argued to the court and jury by the counsel for each side, the plaintiff's counsel opening and closing.

Throughout the trial the judge decides what evidence may properly be presented to the jury, and after the closing argument, it is his duty to instruct them on the points of law **Duties of judge and jury** involved in the case. Either party may move for particular instructions, the granting or refusing of which by the court, if erroneous, may be taken advantage of by a bill of exceptions.³ After receiving their instructions, the jury retire for deliberation under charge of an officer of the court. Ordinarily their verdict must be unanimous; and if agreement is found impossible, they may be discharged by the judge, the cause then remaining for trial as if none had taken place. If they are able to agree, a verdict is rendered for the plaintiff or defendant; and after the verdict has been accepted by the court, judgment is rendered

¹ Or the defendant may file a demurrer, which creates an issue of law.

² In equity cases there is ordinarily no jury, and any civil case may be tried without a jury if both parties consent.

³ The object of a bill of exceptions is to make that a matter of record which otherwise would not be, for the purpose of subsequent proceedings in error. Either party may except to any rulings of the court which he deems erroneous, and on the basis of these exceptions ask for a review of the case by a higher court.

accordingly. If no appeal is taken from this judgment, it is enforced, if against the defendant, by a process called execution, which is an order of the court directing the sheriff (or constable) to see that the judgment is satisfied. Legal judgments are generally directed against the defendant's property, which will be seized and sold unless the plaintiff be paid the damages or compensation in money awarded to him. Judgments in equity are ordinarily directed against the person of the defendant, directing him to do or refrain from doing some particular thing.

The decision of the court is not always accepted as final. Under certain conditions the judge who tried the case will grant a new trial; or the dissatisfied party may carry the case up to the next higher court, either by appeal or writ of error.

162. Adjudging Legislative Acts Unconstitutional. In addition to the functions ordinarily performed by courts in all countries, American tribunals stand practically alone in the possession of a power which has greatly enhanced their dignity and importance. The American judiciary is the final and authoritative interpreter of the constitution. In every commonwealth the written constitution is the supreme and fundamental law to which all legislative acts must conform. The statute is the expressed will of the legislature; but the constitution is the expressed will of the people, and is therefore of higher legal authority. In their State constitution the people have limited and defined certain governmental agencies, including the legislative, executive, and judicial departments, and have formally announced certain fundamental principles. Hence if the acts of any of these agents are in conflict with the will of the people as expressed in the constitution, such acts are null and void and may be so declared by the courts.

163. Principles of Constitutional Interpretation. In determining whether a legislative act is constitutional, courts are guided by certain fundamental principles of constitutional interpretation. One of the most important of these is, that the act must come

before the court in the form of a concrete case — that is, there must be actual litigation between two or more parties in which the question of constitutionality arises.¹

Moreover, the question of constitutionality must be clearly presented to the court, and a decision upon the point must be necessary to determine the issue. The pre-
Statutes presumed to be valid
 sumption is in favor of the validity of the act, and its unconstitutionality must be clearly shown before the court will set it aside. The motives of the legislature cannot be inquired into, nor can it be shown that the act was procured by fraud or bribery.

An act adjudged unconstitutional is null and void — it is, in legal contemplation, as inoperative as though it had never been passed. The decision of the court in
Effect of unconstitutional act
 the case is binding only upon the parties to the suit; but it establishes a precedent which will be followed if the same question is again presented to the court, and hence it furnishes a notice to all parties that the statute is to be treated as void and of no effect.

164. Judicial Control of Executive Officials. A second important characteristic of the American judiciary is the indirect control which it exercises over executive
Executive officials amenable to courts
 officials through its power to pass upon the legality of executive acts. Thus if a governor should illegally remove an official from office, the latter may bring an action against the governor in the proper court; and if it be shown that the officer was unlawfully removed, the court will reinstate him. Similarly, any citizen who is wronged by an executive act may bring suit against the offending officer in the ordinary courts, as he would against a private citizen.²

¹ In only a few commonwealths, and there by express constitutional provision, may the executive or legislature request the courts for advice as to the constitutionality of legislation before its passage.

² This is in marked contrast to the system of administrative law prevailing in most countries of continental Europe, where government officials are to a great extent protected from the ordinary law of the land as to their official acts, for which they can only be held accountable before special administrative courts.

American courts use freely their power to issue writs

Writs of *mandamus* in order to compel executive officers

to do acts which it is their plain duty to perform, providing the act is one ministerial in its nature and not involving the exercise of official discretion. They also issue writs of *injunction* to prevent officials or private individuals from performing illegal acts.

165. Relation of State to Federal Courts. State and federal courts are concurrent jurisdiction entirely independent in the exercise of their respective powers. Their jurisdiction, generally distinct, in some cases overlaps. Many civil cases can be brought at the option of the plaintiff either in a State or federal court; or, when brought by the plaintiff in the State court, may be removed to the federal court by the defendant.

In any case tried in a State court, if the federal constitution, or a federal law or treaty is involved, and the decision is

Appeal to United States Supreme Court

IN THE COURT OF COMMON PLEAS OF WEST-MORELAND COUNTY, PENN'A.

SITTING IN EQUITY

No. 746 Equity.

Jamison Coal & Coke Company, a Corporation of the State of Pennsylvania, Plaintiff,

vs.

United Mine Workers of America, an Association Incorporated or Unincorporated, Marshall Marracini, et al., Defendants.

DECREE

And now, June 1st, 1910, this case came on for hearing on motion to continue the preliminary injunction granted May 26th, 1910, until final hearing, and after the taking and hearing of all testimony presented, it is adjudged and decreed as follows

That the United Mine Workers of America, an Association, incorporated or unincorporated, Marshall Marracini, Charles Shaw, Joseph Littlewood and George Thompson, organizers, officials or members of said association, Christopher Columbus, John Morgan, John Marks, James Dinsmore, John Luteransic, William Green, Joe Filician, Elmer Harris, James Walker, William Hays, George Cushing, Joe Leich, Joe Vedidick, Nick Yardish, Stanley Begos, Frank Begos, Charles Kickler, John Francis, Frank Checkers, Patrick Duffy, Patrick Galvin, Philip Duffy, H. Brown, Patrick Cairns, Tony Palo, Adam Shurkosky, Frank Bakat, Anton Bernitoski, George Conquash, Andy Conquash, Andy Surin, Joe Kurtz, John Lance, Link Lancc, Archie McKeever, John Heasley, William Logan, Harry Heasley, George Ray, Sr., Lew Hawn, Jacob Heasley and James Cole, defendants, and all other persons who may at any time hereafter assemble with them or aid or assist them in the acts complained of in the bill in this case, be enjoined and restrained from conducting or engaging in marches to and past the mines, property and works of the Jamison Coal & Coke Company, and from assembling at or near the works of said company for the unlawful purpose complained of in this bill and indicated by the testimony in this case; and it is further decreed that as a mode for the accomplishment of such unlawful purpose of intimidation, they be enjoined and restrained from establishing and maintaining camps upon the immediately adjacent lands of Ruffner's heirs or elsewhere in such close and immediate proximity of the plants and property of the complainant whereon to collect large bodies of men brought from other localities with a view and for the purpose of thereby intimidating complainant's employees who desire to work by any such display of hostile force, or by means of noise, threats of personal violence, opprobrious epithets addressed to said employees or any of them from that point, or by any other hostile and unlawful means whatsoever to operate on the fears of said employees, or to thereby interfere with complainants in the operation of their works. This decree to remain in force until final hearing and until the further order of the Court. Such of the defendants named in the bill as are not specifically named in this decree have not been shown by proof to have participated in the unlawful acts complained of in the bill, and therefore, the injunction as to them is discharged

Attest:

HARRY N. YONT,
Prothonotary

BY THE COURT

A PENNSYLVANIA INJUNCTION

against the party claiming a right, title, privilege, or immunity under federal law, the case may be appealed for final decision to the Supreme Court of the United States. If the State court upholds the federal law, its decision is final.

166. **Interstate Judicial Relations.** The courts of the different States are entirely independent of each other, subject to the limitation contained in the federal constitution that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State."¹ Decisions of a State court constitute precedents of binding obligation only within the boundaries of the particular commonwealth. The decisions of courts of other commonwealths are constantly quoted in legal proceedings, but have no authority beyond the intrinsic value of their reasoning and conclusions.

Effect of
judgments
and de-
cisions

No State court can summon before it witnesses who live in another State, since the legal process of the court is not effective beyond the boundaries of the commonwealth. In order to avoid this difficulty, all States permit testimony for use in civil cases to be taken outside their limits by deposition.

Depositions

GENERAL REFERENCES

Baldwin, Simeon E., *The American Judiciary* (1905), chs. VII-VIII, X-XI, XIV, XXII.

——— *Modern Political Institutions* (1898), ch. VII.

Beard, C. A., *American Government and Politics* (1910), ch. XXVI.

——— *Readings in American Government and Politics* (1910), ch. XXVI.

Black, H. C., *Constitutional Law* (1897), ch. XII.

Bryce, James, *The American Commonwealth* (1907), I, ch. XLVII; II, chs. CI, CII.

Cooley, Thos. M., *Constitutional Limitations* (1903), ch. VII.

Dillon, J. F., *Municipal Corporations* (4th ed., 1890), II, chs. XX-XXIII.

Forman, S. E., *Advanced Civics* (1905), ch. XXIV.

Hart, A. B., *Actual Government* (1903), ch. IX.

James, J. A., and Sanford, A. H., *Government in State and Nation* (1903), ch. VII.

Lowell, A. L., *Essays on Government* (1889), no. III.

¹ *United States Constitution*, Art. IV, Sec. 1.

McClain, E., *Constitutional Law* (1905), ch. xxiv.

Schouler, James, *Constitutional Studies* (1904), pp. 283-295.

Walker, Timothy, *American Law* (1905), pp. 50-60, 108-117, 566-628.

Wilson, Woodrow, *Constitutional Government in the United States* (1908), ch. vi.

——— *The State* (1906), secs. 1147-1173.

QUESTIONS AND EXERCISES

1. Name the several grades of courts in your State, beginning with the lowest.
2. How many judges constitute the highest court? How are they chosen? Give their term of office, qualifications, and salary.
3. Where and when does the highest court hold its sessions? Name the judges.
4. Do all the judges of the highest court belong to the same political party? Has any attempt been made in your State to secure a non-partisan judiciary?
5. Answer questions in 2 concerning judges of the lower courts.
6. How may a judge be removed from office in your State?
7. What is the number of the judicial circuit (or district) in which you live? What territory does it include? Name the judges.
8. Is there a court in your State corresponding to the probate court described in Section 155? If so, what cases are tried in it?
9. If you live in a large city, what special courts exist there?
10. Do you favor appointment or election of judges? Short or long terms? Give reasons.
11. Describe the kind of man who you think would make a good judge.
12. In what court would you sue a man for a debt of \$20? For a debt of \$2000? In what court would a man accused of murder be tried? A man accused of violating a speed ordinance?
13. What are the advantages and defects of trial by jury?
14. Visit the courthouse when court is in session, and write a description of the court-room and the trial.
15. Suggested readings on the State judiciary: Kaye, P. L., *Readings*, pp. 311-328.

CHAPTER XII

THE POLICE POWER

167. Definition of the Police Power. The police power is the governmental power to make all laws necessary to preserve and protect the public peace, public safety, public health, and public morals.¹ It is uni-^{What is included}versally conceded to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance.² For example, under this power government may order the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the regulation of railways and other means of public conveyance; the suppression of gambling and the liquor traffic; and the confinement in hospitals of the insane or those afflicted with contagious disease. Even beyond this, government may interfere wherever the public interests demand; and hence a large discretion is vested in the legislature to determine what the interests of the public require, and the measures necessary for their protection.

168. General Characteristics of Police Power. It is essential to free government that individual rights be secured against governmental tyranny; but since^{Nature and origin} rights guaranteed to individuals may be abused by them to the detriment of the community as a whole, it is likewise essential that the public welfare be secured against individual selfishness. No one should be permitted to make such use of his personal or property rights as to interfere with a reasonable enjoyment by others of similar rights. Thus the police power has its origin in the

¹ "This police power of the State extends to the protection of the lives, health, comfort, and quiet of all persons, and the protection of all property within the State." — *Thorpe v. Rutland and Burlington Railroad Company*, 27 Vt. 140; *Thayer's Cases*, 1, 709.

² *Lawton v. Steele*, 152 U. S. 133; *Thayer's Cases*, 1, 819.

principle "*salus populi suprema lex*" (regard for the public welfare is the highest law). Every person has a right to the free enjoyment and disposal of his property; but if a man living in a populous community erects a slaughter-house on his premises, or engages in the manufacture of deadly explosives, such use of his property would be adjudged a nuisance because dangerous to the public health or safety; and would be prohibited by government through the exercise of the police power. Thus in its practical application, the police power proceeds upon the principle that each must so use his own as not to injure another ("*sic utere tuo ut alienum non lædas*").

So essential is this power to the public welfare that the courts have declared that it cannot be surrendered by the legislatures. It is a part of governmental power, **Police power inalienable** and "the power of governing is a trust committed by the people to the government, no part of which can be granted away."¹ Even through contracts founded upon a valid consideration, legislatures cannot so limit the discretion of their successors that they may not enact laws necessary to protect the public safety, public health, or public morals.

The police power is distinct from eminent domain. Eminent domain is an appropriation of private property to the use of the public; while the police power **Distinct from eminent domain** regulates or destroys private property in the hands of its owner. When the right of eminent domain is exercised, proper compensation must be made to the owner; but where property depreciates in value or is destroyed through the exercise of the police power, the owner is not entitled to compensation.²

¹ *Stone v. Mississippi*, 101 U. S. 14; *Thayer's Cases*, II, 1771. In this case the court sustained the provisions of the Mississippi constitution of 1869 prohibiting lotteries, and a statute of 1870 enforcing these provisions, as against a corporation chartered in 1867 with authority to carry on the business of a lottery for twenty-five years. The prohibition was held a valid police regulation tending to promote the public morals.

² Thus capital invested in breweries may be greatly depreciated in value through the adoption of a State prohibition law, but the owners are without redress. Such was the decision in *Mugler v. Kansas*, 125 U. S. 623; *Thayer's Cases*, I, 793.

169. Scope of the State's Police Power. While the police power of the national government is narrowly limited in its scope and extent,¹ that of the States is full and complete except as limited by express provisions of the federal or State constitutions. Municipalities within the commonwealth also possess limited police powers delegated by the State government, to be exercised through municipal ordinances; but the police power of municipalities is subordinate to the general police power of the State government, and may be controlled or abrogated by the latter.

In exercising the police power, both the State and federal governments are limited by certain important principles designed to prevent its abuse. (1) State laws in exercise of this power must not violate any provision of the federal or State constitution. (2) State legislation must not interfere with the exclusive jurisdiction conferred upon Congress over certain subjects. (3) State and federal measures passed in the exercise of this power must not be unreasonable, discriminating arbitrarily against individuals or classes, or invading private rights unnecessarily; but must be based upon one of the grounds for which the police power may be exercised, and be reasonably adapted to that purpose.²

The principal subjects concerning which the police power of the State is exercised include: (1) the maintenance of the public peace and order; (2) the pre-

Limitations

**Subjects of
exercise**

¹ Congress has no general power to make police regulations; but in the exercise of powers expressly granted, and as to subjects over which it has exclusive jurisdiction, Congress may enact measures of public police. Examples are the federal statutes providing for the punishment of treason and the suppression of insurrection or rebellion; excluding from the mails lottery advertisements, fraudulent and other objectionable matter; prohibiting trusts and combinations in restraint of trade; establishing a national quarantine; and regulating immigration.

² A State police regulation held invalid as interfering with federal control of interstate commerce was the prohibition law of Iowa, forbidding the sale in that commonwealth of intoxicating liquors in original and unbroken packages imported from another State. The Supreme Court of the United States declared this law unconstitutional, holding it to be an invasion of the exclusive control by Congress of interstate commerce. (*Leisy v. Hardin*, 135 U. S. 100; *Thayer's Cases*, II, 2104.) This decision would have made it impossible to enforce State prohibition laws had not Congress promptly passed the Wilson Act, providing that when liquor is imported into a State it becomes subject to the police power of the commonwealth in the same manner as domestic articles of a similar nature.

servation of the public safety; (3) the promotion of the public health; and (4) the protection of the public morals.

170. Maintenance of Public Peace and Order. Maintenance of the public peace and order is essential to the very existence of the State. Hence government may enact laws necessary to the performance of its functions; it may define crimes and punish criminals; establish courts and regulate civil and criminal procedure; provide for sheriffs, jails, and penitentiaries; prevent and suppress unlawful assemblies and riots; and in general do all things necessary to maintain law and order throughout the commonwealth.

Every citizen owes to the community implicit obedience to the laws and to the regularly constituted authorities; and upon the orderly spirit characteristic of most citizens, government largely relies for the preservation of the public peace. The official agencies charged with the special duty of enforcing laws are: first, the local police force, consisting of policemen in the cities, and constables in the rural districts; and second, the sheriff, who is both the executive officer of the courts, and the general conservator of peace throughout the county. The sheriff has power to appoint deputies, and if necessary may summon to his aid a *posse*.¹

Under ordinary circumstances these local forces are adequate to suppress lawlessness; but if the civil authorities are unable to cope with the disturbance, the governor, ordinarily upon request of the county sheriff, will order the State militia to the scene. If even the militia are unable to suppress the disorder, the State legislature or the governor (if the legislature is not in session) may apply to the President, who can use the whole military power of the federal government to suppress the outbreak. If the violence is so great as to interfere with

¹ In theory, the *posse comitatus*, or county force subject to the sheriff's summons, includes all able-bodied men within the county.



ARMORY OF THE STATE MILITIA
At Medford, Mass.



POLICE PROTECTION DURING A STRIKE

A number of wagons, each guarded by a squad of policemen. The occasion was a teamster's strike in a large city.

the execution of the functions of the federal government, as the transmission of the United States mails, the President may send federal troops to the scene without the request, and even contrary to the desire, of the State authorities.¹

Thus the immediate purpose of the militia is to act as a sort of State police force on which the governor may call in case of serious riots or insurrection. Under an Militia act of Congress, the militia liable to be called out by the President consists of all able-bodied male citizens between the ages of eighteen and forty-five, an aggregate of over fifteen million men. This entire number consists of two classes: a small force (about 100,000 men) of organized militia (known as the national guard and the naval militia²); and a vast force of reserve militia, called upon only in time of emergency.

The national guard is in no sense a standing army but rather a citizen-soldiery, its members pursuing their ordinary vocations and coming together for drill a few The na-
tional guard times each month at the armories provided by the State government. Each year the entire national guard of the State is assembled in an encampment for the purpose of inspection and drill. Enlistment is voluntary, usually for a period of three years.

Congress prescribes the rules for the organization, armament, and discipline of the militia; and these are now the same as for the regular army. The militia may Regulations
concerning
militia be called into the service of the United States in order to execute the laws of the Union, suppress insurrection, and repel invasion. Except when called into the federal service, the commander-in-chief is the governor, assisted by his military staff, at the head of which is the adjutant-general. Other officers are appointed by State authorities, or elected by the men.

¹ This action was taken by President Cleveland during the great railroad strike of 1894.

² Nineteen commonwealths bordering upon the lakes or seacoast maintain naval militias, organized and officered in accordance with the rules of the United States Navy.

171. Preservation of the Public Safety. One of the principal objects for which the police power may be exercised is the preservation of the public safety. Under **Regulations** this head are included the numerous statutes regulating steam and electric railways;¹ prohibiting the keeping of explosives in dangerous quantities; forbidding the carrying of concealed weapons; prohibiting the sale of poisonous drugs unless labeled poison; requiring the muzzling of dogs; providing that electric light wires in cities be laid below the surface of the streets; regulating the general use and care of streets and sidewalks; and establishing building regulations.²

172. Promotion of the Public Health. Of the highest importance are the laws and regulations designed to promote the public health of the community by maintaining good sanitary conditions, and by preventing the spread of contagious or infectious disease. **Public health boards** Control of public health is left primarily to local health boards or officers of the cities, townships, and counties; but in nearly every commonwealth there is a State board or department having general supervision over conditions affecting the public health, with some degree of control over local boards and officers.

In order to protect the public health, governments generally forbid the use of surface wells in cities; establish **Health regulations** quarantine regulations, as the exclusion from the State or the destruction of diseased cattle; prohibit the sale of unwholesome provisions and adulterated food products; provide public hospitals and require the removal thereto of persons afflicted with dangerous contagious or infectious diseases; make regulations for the proper burial of the dead; and adopt such other rules as are necessary to

¹ For example, requiring the erection of fences and cattle-guards, the safeguarding of railway-crossings, the use of spark-arresters, of signal and switching devices, of brakes and automatic couplers, regulating the speed of trains in cities, requiring the maintenance of suitable depots and waiting-rooms for passengers, and prescribing tests of competency for engineers and conductors.

² For example, prescribing the maximum height of buildings, the strength of foundations and walls, character of the plumbing, and the number of exits and fire-escapes.

protect the general health of the community. The liquor and cigarette traffic may also be regulated or entirely prohibited by the legislature as dangerous to the public health.

173. Protection of the Public Morals. The object of legislation in protection of public morality is not to set up a standard of morals to which each person must conform, the private character of the individual being a matter for his own conscience and the moral law. But government does have regard to the general moral health of citizens, just as to their physical health, and hence prohibits certain conduct which tends to lower the general moral tone of the community. On this ground statutes have been upheld punishing blasphemy; requiring the cessation of all ordinary business and employment on Sunday;¹ prohibiting gambling and other immoral amusements and entertainments; suppressing lotteries; and forbidding acts of cruelty to animals.

Public and
private
morality

174. Miscellaneous Examples of the Police Power. Four important subjects of the exercise of the police power deserve special consideration, being justifiable upon one or more of the above grounds of public safety, health, or morality. These are: (1) the regulation of trades, callings, and occupations; (2) regulation of labor; (3) regulation of charges and prices; and (4) regulations to prevent frauds and oppression.

175. Regulation of Trades, Callings, and Occupations. The general principle is that one may engage in any lawful occupation or employment; but the commonwealth may regulate the conditions under which employments may be carried on, and forbid those which it deems prejudicial to the public good. Legislation concerning occupations and employments is usually for one of three purposes: (1) Certain occupations, as the liquor traffic and gambling, are deemed inherently vicious and immoral, and may be regulated or entirely prohibited. (2) Other callings (as the business of ticket-scalping), while not inherently immoral, may be forbidden as against public policy; and other proper occupations may be regulated (as the business of pawnbrokers and junk-dealers); or altogether prohibited under conditions likely to render them a public nuisance (as slaughter-houses in cities).

¹ Sunday regulations are now generally sustained as necessary to the public health, rather than on moral grounds.

(3) Finally, there is a large class of occupations and professions where the safety, health, or property of the public is directly dependent upon the possession of special knowledge and skill on the part of those who practice them; and hence government may restrict such callings (as those of law, medicine, teaching, pharmacy, plumbing) to persons who can pass prescribed examinations designed to test their qualifications.

176. Regulation of the Liquor Traffic. Regulation of the manufacture and sale of intoxicating liquors has always been held a valid exercise of the police power, justifiable on all three grounds of public safety, health, and morality. **State-wide prohibition** Absolute prohibition of the manufacture and sale of intoxicating liquors (except for medicinal or mechanical purposes) exists by constitutional provision in Maine, Kansas, North Dakota, and Oklahoma; and by statute in Alabama, Mississippi, North Carolina, Georgia, Florida, and Tennessee.¹ Against the policy of State-wide prohibition, it is pointed out that in the prohibition commonwealths, breweries and distilleries exist and operate; that liquor is sold openly in many cities, and surreptitiously in many others; and that because of the difficulty of obtaining evidence and convictions against liquor-sellers, the prohibition law is practically a dead letter. On the other hand, the friends of this policy claim that prohibition laws are as well enforced as other penal statutes; that they are of immense moral value in placing the stamp of public disapproval upon the traffic; and that, except in the large cities, they have banished the open saloon with its dangerous allurements.

Local option, or prohibition within local areas upon the affirmative vote of a majority of the electors, is the system prevailing in more than half the States. Under this plan the voters **Local option** of a county, township, village, or city (or ward or other district within the city), are allowed to determine whether or not the prohibition law shall be applied to that particular area of the commonwealth. Local option has the great advantage of resting the policy concerning temperance upon the approval of the local community; and upon local approval temperance laws must largely depend for their sanction and support.²

Under the license system, the State taxes each saloon a sum varying in different commonwealths from \$50 to \$1200 a year. The

¹ Many other commonwealths have adopted and subsequently repealed State wide prohibition laws. Among these are Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, Delaware, Michigan, Indiana, and New York.

² Local option and State prohibition have together abolished the saloon from two thirds of the territory of the United States, so that at the present time fifty million people, or more than half the entire population of the Union, live under some form of prohibitory law.

advantages of a high-license system are that it lessens the number of saloons and the amount of liquor sold, and forms a productive source of revenue. Against the plan it is urged that it makes the State a partner in the evils of the traffic, and helps make the liquor-selling business respectable. On the whole, the system of high license, in combination with local option for districts desiring absolute prohibition, seems to be more successful than any other plan.

License
system

The dispensary system, a modification of the Norwegian or Gothenburg system, has been tried in South Carolina. Under this plan, government has a monopoly of the liquor business, all liquor being sold by local dispensers under severe restrictions.¹

Dispensary
system

177. Regulation of Labor. State regulation of labor is justifiable if necessary to protect the safety, health, or morals of the laborers themselves, or of the general public. Regulations of this kind commonly restrict the employment of women and children in factories and mines; provide for the safety of employees by requiring the inspection of elevators and boilers, and the fencing of dangerous machinery; safeguard the health of laborers by prescribing the minimum floor space and air supply per individual; and regulate the manufacture and sale of articles made in tenements. These provisions are generally enforced by a State department of labor in charge of a commissioner or inspector.

178. Regulation of Charges and Prices. Under the modern principle of freedom of contract, the rate of wages and the prices of commodities are ordinarily left to private arrangement between the parties concerned. But under some circumstances, prices may be controlled by law in the exercise of the police power. Thus where a corporation undertakes a public employment,² as the transportation of passengers and freight, and receives special privileges which only government can confer (as the power of eminent domain), the prices charged may be regulated in the interest of the public so as to prevent unreasonable and exorbitant charges.³ Instances of business "affected with a public interest" and therefore subject to reasonable regulation are: the business of railroads and other common carriers, including hackmen, draymen, and public ferry-men; also that of public millers, hotel-keepers, and warehousemen.

Present
theory

¹ The dispensaries are open only in the daytime; no liquor can be drunk on the premises; and profits from the business go to the government.

² Corporations of this kind are usually called *quasi-public*, or public-service corporations, because of the public nature of their business.

³ *Munn v. Illinois*, 94 U. S. 113; *Thayer's Cases*, 1, 743.

179. Regulations in Prevention of Frauds and Oppression. Limitations are often placed upon freedom of contract in cases where because of special circumstances the parties are not on an equal basis, one of them lacking real liberty of action. Illustrations are the usury laws, and statutes designed to protect minors and insane persons in their business dealings.

Special protection of certain classes
 Regulations designed to protect the public against fraud and oppression are those providing for inspection of weights and measures; regulating the weight of bread in a loaf; prohibiting trusts, corners, pools, and other combinations in restraint of trade and designed to create a monopoly; and forbidding boycotts and other coercive measures which interfere with the rights of persons or property.

GENERAL REFERENCES

- Black, H. C., *Constitutional Law* (1897), ch. xiv.
 Commissioner of Labor, Fifth Special Report (1893), *Gothenburg system*;
 Twelfth Annual Report (1897), *Economic Aspects of Liquor Problem*.
 Cooley, Thos. M., *Constitutional Law* (1898), pp. 250-263.
 ——— *Constitutional Limitations* (1903), ch. xvi.
 Bliss, W. D. P., and others, *Encyclopedia of Social Reform* (1908); articles on Temperance, Prohibition, Factory Legislation, and Tenements.
 Forman, S. E., *Advanced Civics* (1905), ch. LI.
 Freund, E., *The Police Power*.
 Hart, A. B., *Actual Government* (1903), ch. xxx.
 Hunt, W. C., *Workers at Gainful Occupations* (Bulletin no. III, U. S. Dept. of Labor).
 Koren, John, *The Economic Aspects of the Liquor Problem* (1899).
 McClain, E., *Constitutional Law* (1905), ch. ix.
 Prentice, W. P., *Police Powers*.
 Tiedeman, C. G., *Limitations of the Police Power*.
 Tucker, J. R., *Constitution of the United States* (1899), II, pp. 850-861.
 Wines, F. H., and Koren, John, *The Liquor Problem in its Legislative Aspects* (1898).
 Wright, Carroll D., *Practical Sociology* (1899), chs. XII, XXIII.

QUESTIONS AND EXERCISES

1. What authorities have charge of the maintenance of public peace and order in your community? How are these officers chosen? Term? How removed?
2. Explain how the federal government coöperates in maintaining order in your commonwealth, both in suppressing crimes against federal laws, and in supporting the authority of the State government.
3. How many men are included in the national guard of your State? What is the period of enlistment? Where are the men drilled?
4. Under what circumstances may the governor of your State call out its

militia for active service? Has it been necessary to call out the militia within recent years?

5. Give the provisions of five of the most important laws passed by your State legislature to insure public safety.
6. What board or department in your commonwealth has general supervision over public health? Describe the powers of this department fully, and state its authority over local health boards.
7. Examine the reports of your State board of health and ascertain: (a) what regulations it has established concerning communicable disease; (b) what control it exercises over the food supply; (c) what regulations it has adopted to protect the public waters; (d) what other sanitary regulations it attempts to enforce.
8. Give instances of important health regulations adopted by your local health department.
9. Under what circumstances may a health department destroy private property without compensation to the owner?
10. Give instances of laws passed by your State government for the protection of public morals. Are these regulations strictly enforced? Why does the enforcement of such regulations largely depend upon public sentiment in each community?
11. Give instances of occupations or callings which are unlawful in your commonwealth. Of other occupations which, while not entirely prohibited, are subject to a large degree of police regulation.
12. Does regulation of the liquor traffic in your commonwealth take the form of State prohibition, local option, or the license system? What are the principal arguments in favor of State prohibition? Of the local option system?
13. If your commonwealth has adopted State prohibition, state whether the law is effectually enforced. If local option prevails, describe fully the conditions under which the system may be adopted.
14. Give some of the most important provisions adopted by your commonwealth in regulation of labor.
15. What restrictions has your State placed upon the employment of women and children in factories and mines? What is the object of such regulations? Who enforces them?
16. Have you a State board of arbitration for the settlement of labor disputes? Has it been successful in adjusting such controversies?
17. What is meant by a strike? Lock-out? Boycott? Picketing? What can you say of the legality of these methods of industrial warfare?
18. What strikes have occurred in your State during the last year? What per cent of these were successful? (See report of your Bureau of Labor Statistics.)
19. Explain how a strike affects many more people than the employer and employees in the particular industry.
20. Give arguments for and against compulsory arbitration of labor disputes.
21. Prepare a paper on the growth of labor organizations in the United States.
22. Give examples of industries in which the prices or charges are regulated by law in order to protect the public.

CHAPTER XIII

CRIME AND ITS PUNISHMENT

180. Wrong-Doing in Early Society. In the early stages of society, private retribution was the sole remedy for wrongs. If an individual suffered injury, retaliation became the duty of his family or tribe. Organized revenge thus became a social institution, and even in modern times has survived in some backward regions as the "blood-feud."¹ Gradually retaliation was somewhat checked by a system of compensation for injuries through the payment of money or goods — from which the modern system of fines has been derived. With the evolution of the state, government soon assumed the function of arbitrating private controversies and of redressing injuries. Wrongs were no longer a matter of private vengeance, but were redressed through the courts by means of civil and criminal procedure.

181. Classification of Wrongs. The wrongs for which modern governments afford redress are of two classes: private wrongs or torts, and public wrongs or crimes. Torts may be defined as offenses primarily against individual rights, for which the person injured may bring a civil suit for damages or ask protection through an injunction;² while public wrongs or crimes are offenses so injurious to society as a whole that government itself, through a criminal proceeding, enforces the penalty. Some actions, properly designated as sinful or vicious, are neither civil nor criminal offenses — in other words, the law does not seek to prevent all wrongful acts. On the other hand,

¹ Duels, and in a measure lynchings, are survivals of the earlier status.

² The procedure in civil cases has been described in Section 161.

acts which in themselves do not involve moral turpitude are sometimes declared criminal; for example, driving on the left-hand side of a bridge. Thus only those acts are crimes which are so declared by law.

182. The Definition of Crime. A crime may be defined as an act forbidden by law as injurious to the public, and which government prosecutes and punishes in its own name. What acts are declared criminal depends upon the common beliefs and convictions of men as reflected in their laws and institutions. Thus crime varies among different nations and in different periods of history; acts regarded as heroic in one age may be considered criminal in another, and *vice versa*. In the last analysis the definition of crime is the product of public sentiment in a particular society;¹ and upon the same public sentiment criminal laws practically depend for their enforcement.

183. Classification of Crimes. The legal classification of crimes is based upon the nature of the punishment, and includes three grades: treason, felonies, and misdemeanors. Treason is a crime aimed at the government itself, and consists in levying war against the United States, or adhering to its enemies, giving them aid and comfort. Felony includes all the more serious crimes punishable either by death or by imprisonment in the penitentiary;² while misdemeanors are offenses of a minor nature, punishable by fine or imprisonment in the county jail or workhouse.

With reference to the nature of the criminal act, crimes may be classified as (a) offenses against government, as treason and bribery; (b) offenses against public order, as riot and conspiracy; (c) offenses against public health, as nuisance; (d) offenses against religion, morality, and decency, as blasphemy; (e) crimes

Variable
in nature

Treason,
felonies,
and mis-
demeanors

Another
classifica-
tion

¹ Criminality "consists in a failure to live up to the standard recognized as binding by the community." — Ellis, H., *The Criminal*, p. 250.

² At common law, felony included those crimes whose punishment involved forfeiture of the criminal's lands and goods, and for which the death penalty might also be inflicted.

against the person, as assault or robbery; (f) crimes against the dwelling-place, as arson and burglary; (g) crimes against property, as larceny and forgery; (h) maritime offenses, as piracy. ¶

184. The Causes of Crime. The numerous factors which produce crime may be grouped into three great classes: **Analysis of factors** physical, social, and individual. (1) The physical or cosmic factors affecting crime are climate and the variations of temperature. (2) Social factors are the political, economic, and social conditions under which men live; e. g., poverty, density of population, industrial depressions, lynching, corrupt politics, influence of evil associations, and of injurious theories and beliefs. (3) Individual factors of crime are those attributes inherent in the individual himself, as sex, age, education, occupation, and alcoholism — forces whose ultimate product is sometimes hereditary or individual degeneration. The science which treats of the nature and various causes of crime, known as criminology, has been of especial value in suggesting possible methods of prevention.

185. The Repression of Crime. Among the important means which society has provided for dealing with crime **Repressive agencies** are the public police force, whose special duty is the prevention and detection of crime and the arrest of criminals; the system of courts and criminal procedure for the determination of the guilt of accused persons; and the various types of penal institutions for the punishment of convicted criminals. In the United States these agencies are provided chiefly by the individual commonwealths, the federal government having jurisdiction only over limited classes of crimes.¹

186. First Steps in a Criminal Action. The various steps in a criminal proceeding are designed to safeguard the **Warrant and arrest** social welfare, while at the same time protecting the rights and liberty of the individual. As a general rule, the person supposed to be an offender is arrested in pursuance of

¹ See Chapter xxxv.

a warrant, that is, an order issued by a proper magistrate and addressed to an officer directing him to arrest the person named. But either an officer or a private individual may arrest without warrant under certain circumstances; for example, if a crime is being committed in view of the person who apprehends the criminal.

The next step is the examination before a court having original jurisdiction over the offense. In case of felonies this is generally a preliminary step to ascertain whether there is reasonable cause to hold the accused to await the Examina-
tion action of the grand jury; and if guilt seems probable, or if the accused waives examination, he is committed to jail by a *mittimus*,¹ or released on bail.² But in case of misdemeanors, magistrates often have summary jurisdiction, and at once proceed with the trial, render a decision, and assign a penalty.

187. Framing a Formal Accusation. Most State constitutions as well as the federal constitution provide that "no person shall be held to answer for a capital or otherwise in- Indictment
or present-
ment famous crime, unless on a presentment or indictment of a grand jury." The grand jury is a body of men (commonly twenty-three) selected from the people of the county for the purpose of inquiring into offenses committed therein. The public prosecutor lays before this body the information or complaint, together with the evidence in its support. If a majority of the grand jury believe the evidence sufficient to warrant putting the accused person on trial, their foreman indorses on the indictment "a true bill," whereupon it is returned to the court in order that the defendant may be tried. If the evidence does not appear sufficient, the accused has a right to discharge, but may be subsequently indicted by another grand jury. In addition to cases brought before it by the prosecutor, the grand jury may inquire into offenses which have come to their own notice, and if the evidence warrants, may render a presentment or formal accusation, whereupon the court generally orders an indictment to be framed.

In States whose constitutions do not require indictments or presentments, prosecutions are usually initiated by means The
information of an information or written accusation presented under oath by the public prosecutor to the court having juris-

¹ If there is reason to suppose that a person has been illegally committed to jail, he is entitled to a writ of *habeas corpus*. This is an order issued by the judge commanding that the person held be brought before the court in order that it may be judicially determined whether he is legally detained.

² Bail is the delivery or bailment of the arrested person to certain sureties, upon their giving sufficient security for his appearance in court. The amount of the bond varies with the enormity of the offense charged.

diction of the offense charged. Both the information and the indictment must set forth all the essential elements and circumstances of the offense, so that the accused may know the nature of the crime, and be prepared to offer evidence in his defense. In case the person against whom the indictment or information is found has not been arrested and brought before the court, a warrant known as a process is issued for his apprehension.

188. Arraignment and Trial. The next step is arraignment. Before the bar of the court in open session the indictment or information is read to the accused, and he is asked to
The plea plead guilty or not guilty to the accusation. If he stands mute and refuses to answer the arraignment, the court will order a plea of not guilty to be entered. A plea of guilty amounts to a waiver of the trial, and the court may forthwith decree judgment. If the accused pleads not guilty, his attorney may under certain circumstances object to the jurisdiction of the court, demur, offer plea in abatement or in bar; or he may proceed with the trial of the issue.

The trial is the legal investigation of the issues created by the prosecution and the plea. Constitutional provisions commonly
Constitutional safeguards secure the right of the accused: (1) to be admitted to reasonable bail;¹ (2) to have a copy of the accusation against him; (3) to be heard by himself and counsel; (4) to meet the witnesses face to face; (5) to have compulsory process for obtaining witnesses in his favor; (6) to have a speedy public trial before an impartial jury; and (7) not to be twice placed in jeopardy for the same offense.

The petit jury is a body of twelve men legally selected from the people of the county, and duly impaneled and sworn to try the
The petit jury issue between the government and the accused. Before the jury is sworn, both the prosecution and the defense may object to any individuals who, for valid reasons, ought not to serve;² and a certain number of peremptory challenges is also allowed.

When the jury have been sworn, the indictment and plea are read to them, and the trial begins. The various steps include the
Steps in the trial introduction of evidence, the arguments of counsel, the charge of the court, the deliberation and verdict of the jury, and the judgment. Two of the most important rules of evidence in criminal cases are that the accused is always presumed to be innocent until he is proven guilty; and

¹ Except for capital offenses where the guilt is evident or the presumption great.

² Any juror who states that he has formed an opinion about the case is incompetent to serve, provided he would not be able to try the case fairly on the evidence presented.

that the prosecution must prove affirmatively, and beyond a reasonable doubt, every material allegation in the indictment. The accused has the right to testify in his own behalf, but is protected by constitutional provision from being compelled to do so.¹ In criminal cases the verdict of the jury must be unanimous.² If after due consideration the jury cannot agree upon a verdict, they may be discharged and the accused remanded for another trial. If the verdict is an acquittal, the accused is immediately discharged; if it is one of conviction, the accused may under certain circumstances immediately file a motion for a new trial or in arrest of judgment.

If neither of these motions is made or if, having been made, it is overruled, the court proceeds to judgment. This is an order directing the kind and measure of punishment to be inflicted on the accused, in conformity with the laws prescribing penalties for such offenses. Unless stayed by error proceedings or reprieve, or prevented by pardon, execution of the judgment follows; and this consists in the infliction upon the offender of the punishment imposed by the court. Judgment

189. The Theory of Punishment. In the early stages of society, and indeed throughout the greater part of the world's history, the object of punishment was retaliation — a life for a life, an eye for an eye, a tooth for a tooth. The crime of murder is still generally punished on this principle, although the tendency is toward the abolition of the death penalty.³ But the prevailing theory of punishment is not retaliation, but rather the protection of society, and if possible the reformation of the offender. By inflicting punishment, society endeavors to protect itself against criminal acts by awakening a wholesome fear of their consequences. History proves that severity of penalty alone will not solve the problem; and hence effort is now made to provide punishment of such character that it may reform the offender, and ultimately fit him for the life of a trustworthy citizen. Early and modern theories

¹ But if he voluntarily goes on the stand he may be cross-examined like any other witness.

² Except that in a few Western States a verdict of nine or ten out of the twelve jurors is allowed in some cases.

³ Capital punishment has been abolished in Maine, Rhode Island, Michigan, Wisconsin, and Kansas.

Fines or imprisonment, or both, are the penalties commonly inflicted; and these vary greatly in severity throughout the Union, even for the same offense. Laws defining crimes usually prescribe a maximum and minimum penalty, the exact punishment within these limits being left to the discretion of the trial judge. Imprisonment is generally for a fixed period which may be reduced by good behavior; but several commonwealths have adopted the indeterminate sentence under which the criminal is not sentenced for a fixed term, but only until his conduct shows that he is fit for liberty.

Common
punish-
ments

190. Places of Imprisonment. Places of imprisonment comprise lock-ups or police stations, jails, work-houses, reformatories, and prisons or penitentiaries. Lock-ups and police stations are used for the detention of arrested persons pending immediate trial before the proper magistrate. Jails are county institutions intended primarily for the detention of persons awaiting trial; but they are often used for the punishment of offenders sentenced to a short term of imprisonment, notwithstanding this practice in effect provides a school for crime.¹ Work-houses are local institutions used for the punishment of minor offenses; reformatories are intermediate prisons for the punishment of juvenile offenders; and penitentiaries or prisons are provided for the incarceration of convicted felons.

Two general types of prisons are found, the separate system which formerly existed in the Eastern Penitentiary at Philadelphia, and which prevails generally throughout Europe; and the congregate or Auburn system — the common plan in the United States. The separate plan involves a complete separation of the prisoners; each man works, eats, and sleeps in an individual cell apart from all other inmates.² Under the congregate sys-

Types of
prisons

¹ Owing to the fact that prisoners of all grades and ages are often placed together with no provision for useful employment.

² This system involves a large expense for operation, and has been modified at the Eastern Penitentiary by placing more than one inmate in each cell.

tem, the men are placed in separate cells at night, but they work and dine together.

191. The Treatment of Criminals. The importance of classifying criminals with a view to their possible reformation is now generally recognized; and accordingly prisoners are generally classed as juvenile offenders, reformatory cases, and incorrigibles. With the object of encouraging industry and good conduct within the prison, most penitentiaries have a system of marks and grades, promotion from a lower to a higher grade depending upon the number of marks earned. Obedience to the orders of officers and the rules of the prison, performance of assigned tasks, and upright conduct form the basis of the marking system; and by good behavior it is possible for the convict to shorten materially his term of imprisonment. The marking system

Labor is recognized as of the highest value in the treatment of prisoners, the four common systems of prison labor being the lease system, the contract system, the piece price plan, and the public account system. Prison labor

Under the widely used public account plan, government furnishes the plant and raw materials, and the business of manufacturing is carried on under the direction of prison officers. The industries are diversified as much as possible in order to adapt them to the occupations and training of the convicts, and in order to reduce the effects of competition with free labor. In many commonwealths prison labor is devoted largely to the manufacture of goods used in the various State institutions.

192. The Prevention of Crime. Inasmuch as the majority of convicts are unskilled laborers, the best organized penal institutions provide trade and technical education for their inmates, with the object of qualifying them for useful employment upon their discharge. In many other ways society now aims at the prevention of crime instead of relying solely upon repressive measures. These preventive methods include careful registration Preventive methods

of criminals by the Bertillon method; employment bureaus to secure work for discharged prisoners; increased efficiency of police systems; improved systems of poor relief; checks upon the hereditary supply of criminal stock; the removal of the social causes of crime (as defective economic conditions); and finally, the improvement and adaptation of educational systems, especially by enlarging the facilities for trade and technical training.

193. Treatment of Juvenile Offenders. In recent years there has been great progress in the social treatment of juvenile offenders, most of whom need training rather than punishment. Special provision is now made for the care of such cases in industrial and reform schools, and in well-organized reformatories. The reformatories at Westboro, Massachusetts, Coldwater, Michigan, and Lancaster, Ohio, are model institutions of their class;¹ and excellent results have been obtained by means of the industrial and academic education which they supply, aided by the principle of the indeterminate sentence.

The latest development in the treatment of youthful offenders is the establishment of special courts for the trial of juvenile delinquents, the judges commonly having wide discretion over the disposal of such cases. Special probation officers are also employed for the supervision of delinquent, dependent, and neglected children in the numerous cases where institutional treatment does not seem expedient. These officers act under the direction of the juvenile court in the commonwealths having this institution.

¹ In all there are seventy reformatories in the United States with an average attendance of 20,000 juveniles.

GENERAL REFERENCES

- Baldwin, Simeon E., *Modern Political Institutions* (1895), chs. v, ix.
 Beard, C. A., *American Government and Politics* (1910), pp. 568-577.
 Bishop, J. P., *Criminal Law*.
 Black, H. C., *Constitutional Law* (1897), ch. xx.
 Boies, H. M., *Science of Penology* (1901).
 Dugdale, R. L., *The Jukes* (1902).
 Ellis, Havelock, *The Criminal* (1907).
 Bliss, W. D. P., and others, *Encyclopedia of Social Reform* (1908); articles on Crime and Penology.
 Hall, A. C., *Crime in its Relation to Social Progress* (1902).
 Henderson, C. R., *Dependent, Defective, and Delinquent Classes* (1906), pp. 215-338.
 McClain, E., *Constitutional Law* (1905), ch. XLII.
 ——— *Criminal Law*.
 Morrison, W. D., *Crime and its Causes* (1891).
 New International Encyclopedia, articles on *Criminology*, *Convict Labor*, *Punishment*, *Reformatories*.
 Robinson, W. C., *Elementary Law* (1882), pp. 239-336.
 Tallack, William, *Penology and Preventive Principles* (1896).
 Walker, Timothy, *American Law* (1905), pp. 553-565, 636-643.
 Wines, F. H., *Punishment and Reformation* (1895).
 Wright, Carroll D., *Practical Sociology* (1899), chs. XXI-XXII.

QUESTIONS AND EXERCISES

1. Are there any provisions in your State constitution concerning crimes or punishment?
2. What is a felony under the laws of your State? Name several crimes which are felonies.
3. In your community what court has jurisdiction over misdemeanors? Over felonies?
4. Describe the first steps in a criminal action under the laws of your commonwealth.
5. How is the grand jury chosen? Of how many men does it consist? Describe the process of rendering an indictment or presentment.
6. Describe the remaining steps in a criminal action in your county (arraignment, trial, judgment).
7. Explain the importance of jury trial to one accused of crime.
8. What is the method of selecting petit jurors in your county? Can you suggest a better method?
9. Visit the courthouse and observe the steps in a criminal trial. Write a report of the proceedings.
10. Enumerate the safeguards in your State constitution designed to secure the rights of accused persons.
11. Is the principle of the indeterminate sentence applied in your commonwealth?
12. Are those who have been convicted of a felony permitted to vote in your State?
13. Give arguments for and against capital punishment.
14. Classify the various places of imprisonment in your State. What class of offenders is sent to each?

15. What industries are carried on in your State penitentiary? Explain the advantages to the State and to the prisoners of keeping the latter employed at useful labor. What arguments are sometimes urged against prison labor?
16. Is there a reformatory in your State for youthful offenders? If so, write a brief account of it.
17. What industrial or reform schools are there in your State? Are they accomplishing good results?
18. Is there a juvenile court in your community? If so, describe its work, and that of the probation officers.
19. Prepare a brief report on the treatment of criminals in colonial times. (McMaster, *History of the American People*, 1, pp. 93-102.)
20. Suggested readings on criminal procedure: Kaye, P. L., *Readings*, pp. 316-334.

CHAPTER XIV

PUBLIC CHARITIES

194. Relation of Government to Charity. In early times the relief of the destitute and helpless members of society was left chiefly to the church and to private philanthropy; but to-day in the more progressive countries the care of the dependent and defective classes is a clearly recognized function of government. The aim of public charity is the relief of those suffering from poverty and disease; and at the present time special effort is made to discover and remove the causes of distress, rather than merely to minimize the results of bad conditions.¹

Charity
a public
function

Actual administration of public charities is entrusted primarily to local areas — to the towns in New England and the Middle States, to the counties in the South, and in the Central and Western States to one or both of these divisions. The larger cities frequently have a system of poor relief separate from that of the counties in which they are situated.

Local
admin-
istration

In many commonwealths the work of local authorities is subject to a greater or less degree of central supervision by a State board of charities. Generally this is merely an advisory body with power to inspect, investigate, and make recommendations to the governor or legislature (as in New York, Massachusetts, Ohio, and Indiana). In several commonwealths² the State board is one of control, with power to appoint the superintendents of charitable institutions, inspect the construction of asy-

State boards
of charities

¹ The effort to ascertain causes is characteristic of private, rather than of public charity.

² Including Minnesota, Iowa, Kansas, and Wisconsin.

lums and poor-houses, and in general to administer the charitable system of the State.

195. The Causes of Poverty. Various theories have been advanced by economic writers to account for the fundamental causes of poverty. Thus some economists, following the teachings of Malthus, assert that poverty exists mainly because population tends to increase faster than food supply. Other writers accept the theory of Henry George that poverty exists because the owner of land receives as rent a large share of the annual product which ought to go to the laborer. Socialistic writers, following the doctrine of Karl Marx, maintain that poverty is due to the fact that under capitalistic production the capitalist appropriates nearly all the product of labor, paying the laborer wages which barely suffice to keep him alive.

A more probable explanation is that poverty results not from a single cause, but from a number of causes. These have been grouped by Professor Carl Kelsey into three main classes, environmental, personal, and social, as shown in the following outline: —

CAUSES OF POVERTY

I. Environmental:

- (a) Adverse physical environment: polar regions, tropics, deserts, swamps.
- (b) Disasters, flood, earthquake, fire, famine.

II. Personal:

- (a) Physical defects: feeble-mindedness, insanity, blindness.
- (b) Moral defects: dishonesty, laziness, shiftlessness, etc.
- (c) Intemperance.
- (d) Licentiousness.
- (e) Sickness.
- (f) Accident.

III. Social:

- (a) Industrial changes affecting the worker: change of location of trade, inventions, strikes.

- (b) Exploitation.
- (c) Race prejudice.
- (d) Sickness, death, desertion, crime of natural supporter.
- (e) Defective sanitation.
- (f) Defective educational system.
- (g) Bad social environment.
- (h) War.
- (i) Unwise philanthropy.

It is estimated that about one third of all cases applying for relief do so because of sickness; another third because of labor problems; and probably one fifth owing to intemperance in the family.

196. General Methods of Poor Relief. The two general methods of granting public relief are: (1) outdoor relief, or that given to dependent persons in their homes; and (2) indoor or institutional relief.

Outdoor relief is carried on by local governments, which often supply goods, or orders for goods, to persons unable to support themselves. The practical difficulties in administering public outdoor relief are so great that many authorities believe that this plan should be discontinued except in rural districts.¹

Indoor or institutional relief is afforded through the almshouse or poor-farm, the fundamental institution in our system of public charity. The almshouse is generally a county institution except in New England, where the care of the poor devolves upon the towns.² Municipal almshouses are maintained by the larger cities; while rural townships usually care for their paupers on poor-farms.³

197. Care of Dependent Children. The degrading influence of almshouse life upon children is now generally

¹ "Nearly all the experiences in this country indicate that outdoor relief is a source of corruption to politics, of expense to the community, and of degradation and increased pauperization to the poor. . . . In the new communities of the West it has seemed to be almost necessary; but it is always to be watched with care, to be kept at a minimum, and in large cities to be definitely prohibited." — Warner, A. G., *American Charities*, pp. 174-175.

² New Hampshire forms an exception, having both county and town institutions.

³ In several commonwealths a group of smaller counties frequently unite in the maintenance of a district or association almshouse.

recognized,¹ and in many commonwealths dependent children are cared for in children's homes. Since institutional life at best is unnatural and unsatisfactory, this method is often supplemented or even entirely superseded by the placing-out system, which aims to have dependent children adopted at an early age into private families. Practically all charitable workers agree that "the home is the natural place to properly develop the child"; and hence if supplemented by proper supervision, the placing-out plan is far superior to the institutional method.

198. Medical Charities. Medical assistance forms another important branch of public charity. Throughout the United States it is customary to furnish advice and medicines to the destitute in their homes, for which purpose physicians are employed by the town or county authorities. More serious cases may be treated in the county infirmary (a general hospital connected with the almshouse); or in cities, at the municipal hospital. A prominent feature of city hospitals is the free dispensary, where advice and medicine may be secured without charge by those unable to pay.

199. Dealing with the Vagrant Poor. The best method of dealing with the homeless and wandering poor is a serious problem, largely because of the difficulty of distinguishing between the professional tramp and the honest but unfortunate seeker for employment. In most communities, both of these classes are treated in the same way, a common method being to get rid of them as promptly as possible by passing them along to a neighboring city, transportation being frequently provided for this purpose. Sometimes such persons are arrested as vagrants and sent to the jail or workhouse; or again they may be given the relief asked

¹ Dickens said: "Throw a child under a cart-horse's feet and a loaded wagon sooner than take him to an almshouse." — The keeping of normal children in almshouses is forbidden in many States (for example, in Massachusetts, New York, Ohio, Indiana, and others).

for without any attempt to discriminate between the deserving unfortunate and the shiftless vagabond.¹ Each of these methods is bad; but as yet comparatively few communities have adopted a more scientific plan whereby each able-bodied applicant for relief is put to work in a wood or stone yard, pending a careful investigation of his case, followed by such action as the circumstances warrant.

200. **Charity Organization Societies.** In many of the larger cities, the various charitable organizations are united in a charity organization society² which is a central agency for securing coöperation among the different philanthropic agencies. The charity organization society aims to secure accurate knowledge concerning each applicant for aid, and then to bring each deserving case to the attention of the organization which can best deal with it.³ This plan avoids duplication of effort by different societies, and tends to prevent imposition by professional tramps and beggars. It makes possible the elimination of indiscriminate almsgiving, since the citizen may refer unknown applicants for relief to the charity organization society, whose special business is the investigation of such cases. Another important function of this organization is the collection and diffusion of accurate information concerning charities and their administration.

201. **Care of Defective Classes.** In earlier days the almshouse commonly cared for defectives, as well as for the dependent class; but at the present time defectives, including the insane, blind, deaf-mutes, and feeble-minded, are often cared for in special institutions maintained by the State.⁴

¹ "Giving without knowledge is, in its effects, like administering powerful medicines in the dark; and the effect of such impatient and impulsive payment for escape from importunity is a direct bid for vagabondage." — Henderson, C. R., *Dependent, Defective, and Delinquent Classes*, p. 89.

² Other names are the Bureau of Charities, Associated Charities, and Society for Organizing Charities.

³ Thus the aim of the charity organization society is simply to act as a clearing-house for its members; but in practice it gives much direct aid.

⁴ A few States have special institutions for the care of epileptics.

Until the early part of the nineteenth century, the insane were treated in a most inhuman manner. Largely through the efforts of Dorothea Dix, public sentiment in the United States was finally aroused on this subject, and gradually the policy has been adopted of treating insanity as a disease, and caring for patients in State rather than in local institutions.¹ In every commonwealth the commitment of persons supposed to be insane is carefully regulated by statutes providing for publicity of proceedings, and for expert medical testimony on the question of insanity.

The blind, deaf and dumb, epileptics, and feeble-minded have also been made State wards in many commonwealths, receiving education and support at public expense. A single commonwealth sometimes maintains a dozen different types of specialized charitable institutions, in addition to those maintained by local governments.

202. The Cost of Charities. The expenditure for charities and corrections is generally the largest single item of the State budget, often comprising from thirty to forty per cent of the entire expenditure of the commonwealth. If to this we add the amount expended by private charities, the total reaches a startling sum. Professor Bushnell estimates that "the total number of public and private abnormal dependents in the United States must be not far from 3,000,000, or one twenty-fifth of the total population of the country; and these are maintained at an annual expense of nearly \$200,000,000, or one tenth of the total wage income of all the manufacturing establishments of the country."²

¹ The present tendency is to have the incurable insane cared for in county asylums (often connected with the almshouse), leaving the better care which the State can offer for the hopeful cases. This is the plan in Pennsylvania and Wisconsin.

² Henderson, C. R., *Modern Methods of Charity*, pp. 385-390.



BOSTON CITY HOSPITAL RELIEF STATION



(By courtesy of the Tenement House Commission, New York)

A TENEMENT HOUSE SECTION IN NEW YORK CITY

GENERAL REFERENCES

- Addams, Jane, *Philanthropy and Social Progress* (1894).
 Alden, Percy, *The Unemployed* (1905).
 Bliss, W. D. P., and others, editors, *Cyclopedia of Social Reform* (1908); articles on Charity Organization Societies, Malthusianism, Pauperism, Poor-House, Poverty, Poor-Laws, Population, Single-Tax, Temperance, Unemployed.
 Davenport-Hill, Florence, *Children of the State* (1889).
 Devine, Edward T., *The Practice of Charity* (1904).
 ——— *Principles of Relief* (1904).
 Henderson, C. R., *Modern Methods of Charity* (1904).
 ——— *Dependent, Defective, and Delinquent Classes* (1906), pp. 1-209.
 Hobson, J. A., *Problems of Poverty* (1899).
 Hunter, Robert, *Poverty* (1904).
 Kellog, Charles D., *History of Charity Organizations in the United States* (1893).
 Loch, C. S., *Methods of Social Advance* (1904).
 Paine, R. T., *Pauperism in Great Cities* (1893).
 Proceedings, National Conference of Charities and Corrections (1874-1893).
 Riis, Jacob A., *Children of the Poor* (1892).
 United States Census, Special Report on Paupers in Almshouses (1906).
 United States Consular Reports, Vagrancy and Public Charities in Foreign Countries (1892).
 Warner, Amos G., *American Charities* (1894).
 Wright, Carroll D., *Practical Sociology* (1899), chs. XVIII, XX.

QUESTIONS AND EXERCISES

1. What provision is made in your State for the defective classes, the deaf, blind, insane, feeble-minded?
2. Is there a State board of charities in your commonwealth? Powers?
3. Make a list of the institutions and associations in your community for the care of the poor. Which of these are public and which private?
4. What local authority (town, municipal, or county) has charge of poor relief? What was the cost of poor relief in your community last year? What part of this sum was expended for outdoor relief?
5. Where is your almshouse located? Is any attempt made to separate the different classes of inmates? Is it well managed?
6. How are the vagrant poor or tramps dealt with in your community?
7. If a street beggar should ask you for money, would you give him any? What are the arguments against promiscuous almsgiving?
8. Is there a charity organization society or association in your community? If so, prepare a paper describing its methods of work.
9. How are dependent children cared for in your community? Is the plan a satisfactory one?
10. Does your community employ physicians to care for those too poor to afford them? Is there a free dispensary in your community?
11. Enumerate some of the principal causes of poverty. Ask local officials what causes are chiefly responsible for pauperism in your community.

CHAPTER XV

CONTROL OF ECONOMIC INTERESTS

203. Economic Functions of Government. An economic service or function is one which relates to the material welfare of society, affecting in some way the production, exchange, distribution, or consumption of wealth. Thus the economic functions of government are directed chiefly toward increasing the total amount of wealth produced, facilitating its exchange, or providing for its more equitable distribution among the various members of society.

To accomplish these aims, State governments perform certain fundamental services without which material progress would be impossible, — such as the maintenance of order, and the protection of individual freedom, private property, and contract rights. These primary services fulfilled, other imperative needs arise: the land and other natural resources must be conserved; labor and capital must be protected and regulated in the public interest; agriculture and commerce are to be promoted. Hence the most important economic activities of State governments appertain chiefly to land, labor, and capital — the three great sources of wealth — and to commerce, or the exchange of commodities.

204. Lands. Nearly all of the States at some period in their history owned large tracts of land, most of which has been sold to settlers at a nominal figure, or sacrificed to obtain immediate funds for educational purposes, or given as bounties to canal and railroad companies. A few commonwealths, notably New York, still own considerable forests; several have important State reservations — such as Valley Forge in Pennsylvania, and

**Economic
activities
of State
governments**

**Public
lands**

Niagara Falls in New York; while others retain lands for use in the operation of commercial or irrigation canals. Further, all States own the land occupied by their public buildings and institutions.

Over private lands within its borders each commonwealth exercises jurisdiction by virtue of its police power. Such lands are subject to taxation, and also to Private lands the exercise of the right of eminent domain; that is, appropriation for public purposes upon compensation to the owner. The State also has the right of escheat, that is, the right to take private lands in the case of persons who die leaving no lawful heirs.

205. **Forests, Game, and Fish.** Within recent years both the State and federal governments have realized the necessity of prompt action in order to prevent Exhaustion of timber supply entire destruction of the country's forests. At the present rate of cutting, the domestic timber supply will soon be exhausted; and the destruction of the forests so affects the drainage of the earth as greatly to increase the danger of floods and freshets.

An important step toward a policy of scientific forestry was taken by the federal government in 1905 when the national forest reserves — in area nearly 100,000,000 Scientific forestry acres — were transferred from the Interior Department to that of Agriculture. Recently, too, a number of the States, following the example of New York, have taken active measures looking toward the preservation of their forests. Nineteen commonwealths ¹ now have officers (usually called forest commissioners) charged with the care of forest interests. Local and State forestry associations have been formed in twenty commonwealths, and in nearly all an Arbor Day is set aside each year to encourage the planting and care of trees.

For the preservation of fish and game, laws have been

¹ These are California, Connecticut, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, West Virginia, and Wisconsin.

enacted providing for close seasons, that is, seasons within which fish or game cannot be taken or killed. **Fish and game laws** Such laws also generally restrict the manner of hunting certain game and of catching fish. The administration of fish and game laws is ordinarily entrusted to one or more commissioners, who are aided in their work by a number of wardens.

206. **Agriculture and Agricultural Interests.** For the general promotion of agricultural interests there is commonly a department of agriculture in charge of a commissioner, or a State agricultural board. **State agricultural department** The duties of this department ordinarily include inspection of live stock with a view of preventing contagious disease, administration of State laws relative to the sale of adulterated food and dairy products, holding of farmers' institutes and annual State fairs, recommendation of desirable legislation, and other miscellaneous duties.

Education in scientific agriculture has been greatly aided by the establishment of agricultural and mechanical **Agricultural education** colleges, which in many commonwealths form an integral part of the State university. Agricultural experiment stations have also been established, which, like the State agricultural colleges, are subsidized by the federal government.

207. **Labor and Factory Laws.** The adoption of regulations concerning the employment of labor and the conditions in factories constitutes another important **State labor bureaus** economic function of State governments. In thirty-two commonwealths general supervision of labor interests is entrusted to a State labor bureau, at the head of which is a commissioner aided by several deputies. One of the most important duties of these bureaus is the collection of statistics bearing upon industrial education and the economic condition of the laboring class.¹

¹ A similar service is performed on a more extensive scale by the federal Department of Commerce and Labor.



(By courtesy of the Forest Service, Washington, D. C.)

The complete destruction of a forest by fire, Port Townsend, Wash. The trees planted to replace those burned grow to the height of a man in about four years. Many years must elapse before a forest can be restored.



Brush piles ready for burning, Bitter-Root National Forest, Mont. Scientific methods prevent forest fires.



(By courtesy of the Review of Reviews Company)

MINNESOTA AGRICULTURAL EXPERIMENT STATION

Crop nursery near St. Paul. Here new varieties of cereals are originated, and old ones improved. The small erect bundles of grain in the foreground are each of a distinct variety of wheat. These bundles have been carefully harvested and tied up with cloth to prevent loss of grain. An exact account is taken of the number of heads, weight of yield, etc., and seed from the best plants is saved for use the next year.



THE DAIRY CAR OF THE "BETTER FARMING SPECIAL"

Other cars are devoted to crops, forestry, etc. The train is equipped by the Boston and Albany Railroad with the coöperation of the Massachusetts Agricultural College. It is periodically sent through the agricultural districts and lectures are delivered to audiences of farmers.

Twenty-seven commonwealths provide factory inspectors, who visit and inspect factories, workshops, and mercantile establishments, and enforce the State laws concerning them.¹ Factory legislation has three principal objects: (1) The protection of the health of employees, by securing proper ventilation, heating, lighting, and good sanitary conditions generally. (2) The prevention of accidents, by requiring guards on dangerous machinery, elevators, and hoistways; also by requiring the inspection of boilers, and the construction of suitable exits and fire-escapes. (3) The regulation of the conditions of employment, especially in the case of women and children, by restricting the hours of labor, prescribing intervals of rest during the working-day, prohibiting night work, and fixing a minimum age limit for the employment of children — usually fourteen years.²

Objects of
factory
legislation

Many commonwealths have provided that eight hours shall constitute a day's work for all laborers employed by the State or local governments. In private industry the hours of labor have been generally reduced from twelve or fourteen hours in the early part of the nineteenth century to eight or ten at the present time; and one of the principal aims of labor unions is to secure universal acceptance of the eight-hour day.

Length of
labor day

To aid in the settlement of industrial disputes, seventeen States³ have established boards of arbitration. These generally consist of three or five members appointed by the governor, employers and employees being equally represented. When strikes or lock-outs occur, it is the duty of these boards to investigate the situation, and if possible to bring about an amicable settlement.

Boards of
arbitration

¹ In fifteen States the duties of factory inspectors are combined with those of the bureau of labor statistics.

² Social welfare imperatively demands the restriction of child labor, and in recent years much has been accomplished in this direction, largely owing to the activity of the General Federation of Women's Clubs, and other organizations. In 1907, measures restricting the employment of children were passed in twenty-eight States.

³ California, Colorado, Connecticut, Idaho, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Missouri, New Jersey, New York, Ohio, Utah, Wisconsin.

They may also arbitrate the controversy, providing both parties consent.

In many commonwealths free public employment offices are maintained by State or local authority to aid the unemployed in finding work, and also as a means of checking the abuses of private employment bureaus.

Public
employment
bureaus

208. Characteristics and Development of Corporations.

Capital is the third great agency in the production of wealth;

and perhaps the most important economic function of State governments is exercised through the

Character-
istics

power to create and regulate corporations, the capitalistic organizations which control the greater part of the commerce and manufactures of the country. A corporation may be defined as a legal person, distinct from the members who comprise it, having a special name, and the capacity of acting for various purposes as a single individual. The corporation is immortal in the legal sense that it can be made capable of indefinite duration; it may sue and be sued in its corporate name; it may acquire property, and — under certain limitations — borrow money; and finally, it has the power to elect officers and to adopt by-laws for the detailed regulation of its business.

The private corporation is of ancient origin, but its remarkable development in the nineteenth century may be

traced to the industrial revolution of the eighteenth. That revolution was characterized by the

Develop-
ment

change from hand to machine labor, from production on a small scale to the factory system. The partnership was at first employed as a means of obtaining the larger capital demanded by the new industrial methods, and this continued the common form of business association until the middle of the nineteenth century. But even the partnership was inadequate for the colossal industrial development of the age of steam and electricity; and hence about the middle of the nineteenth century, the corporation came into general use for larger industrial enterprises.

The stock of the corporation can be distributed among hundreds or thousands of members, thus accumulating amounts of capital impossible in the case of a partnership. Then, too, the shareholders of the corporation are not liable for corporation debts beyond the amount of their stock,¹ whereas partners are jointly and severally liable for firm debts to the full extent of their property. Furthermore, corporate liability cannot be created by the acts of individual members, but only by the directors or officers duly authorized; whereas each partner ordinarily has authority to bind the firm by his acts if within the scope of the partnership business. Finally, the partnership is ordinarily terminated by the death of one of its members, the contrary being true of the corporation. These and other advantages have given the corporation its dominating position in modern industrial life. Advantages

209. **Organization and Control of Corporations.** In general, the powers, duties, and liabilities of the corporation are determined by its charter, an instrument ordinarily granted by the State government under a general act, although a few commonwealths still permit the granting of charters by special acts.² In the case of a private corporation the charter once granted is in the nature of a contract, and cannot afterwards be materially altered or annulled unless this right has been previously reserved.³ General and special acts

In the organization of private corporations a distinction is commonly made between those formed for profit and those not for profit. In most States, corporations for profit are organized under a general law applicable alike to all such corporations; but frequently the general law does not apply to certain classes of corporations, such Method of organization

¹ Except in a few States where shareholders are liable for an additional sum equal to the face value of their stock.

² Congress may charter corporations for carrying on enterprises which come within the range of federal authority; for example, national banks and railways engaged in interstate commerce.

³ The right of the legislature to amend all corporation charters is now generally reserved either by statute or express constitutional provision.

as banks, insurance companies, and railroads, which are chartered under laws specially adapted to each of these forms of industry. The general corporation laws ordinarily provide that persons who wish to form a corporation must apply to the secretary of state for a charter, which will be duly issued upon compliance with the legal requirements.

Corporations are commonly required to make annual reports to the secretary of state, showing the amount of their capital stock, volume of business, and indebtedness; and they must also submit to such other requirements and regulations as the legislature may from time to time deem necessary in the exercise of its police and taxing powers.

210. Regulation of Banks, Insurance Companies, and Railroads. A considerable degree of State control is customary in the case of banks, insurance companies, and railroads, since these corporations come into the closest relations with the people and vitally affect the public welfare.

Banks are commonly organized under a general banking law, which in many States must be first submitted to the voters for approval. Such laws regulate in considerable detail the management of banks, with the object of protecting depositors and the public. The minimum capital and reserve fund is generally prescribed, also the ways in which money may be loaned, and the manner in which directors shall be elected; and provision is sometimes made for periodical examination of the bank by government officials.¹ Supervision of this class of corporations is often entrusted to a State banking department.

Insurance companies are also subject to a considerable degree of supervision, frequently exercised by a State insurance commissioner. As in the case of banks, provision is ordinarily made for the examination of such companies, for annual reports showing in detail the business for the preceding year, and for the maintenance of a reserve fund bearing a certain ratio to the amount of insurance in force.

As quasi-public corporations, railroads are subject to a large degree of governmental supervision. Their business which lies wholly within the boundaries of the commonwealth may be regulated by the State government,

¹ The constitution of Oklahoma requires the State government to guarantee bank deposits.

interstate traffic being subject to federal control. For their supervision two thirds of the commonwealths have established boards of railway commissioners, charged with the special duty of protecting the public and shippers. State railway legislation has sought especially to check combinations of parallel or competing lines (the object of such combination being to destroy competition); and also to prevent discriminating rates in favor of certain shippers, unreasonable charges for services, and overcapitalization of roads with the consequent burden upon rates. The enforcement of these restrictive measures has been entrusted to State railway commissions, which in some commonwealths even possess the power to fix maximum rates for carrying passengers and freight.

211. Industrial Combinations. The simplest form of combination among producers consists of "friendly agreements" designed to check competition by establishing a uniform selling price, or by limiting the amount of the product. **Agreements and pools** In times past these agreements were often violated, and soon a second and more formal plan of organization was developed, known as the "pool." This was a formal agreement to maintain prices through a division of the territory, business, or earnings. For example, prior to the formation of the Whiskey Trust, agreements were usually made annually among the different distillers, fixing the amount which each should produce during the year. For many years pooling was common in the railway business, the traffic or revenues being divided among the various roads according to certain fixed ratios. These agreements were not enforceable at law, since American courts have uniformly held pooling contracts to be in restraint of trade and against public policy; and the difficulty of enforcing such arrangements, together with the prohibition of railway pooling by the federal Interstate Commerce Act of 1887, ultimately led to the adoption of a new form of combination.

This third form of combination is known as the trust. Originally trusts were formed by having competitive corporations place their stock in the hands of a board of trustees, who **The trust** were thus enabled to manage the business of the several corporations in such a way as to secure complete harmony of action. The original stockholders in the corporation were given trust certificates in exchange for their stock, and dividends were paid on the basis of these certificates. The first trust organized in this form was the Standard Oil Trust (1882), later followed by the Whiskey Trust, the Sugar Trust, and many others.

The courts finally held the trust form of combination illegal, declaring that corporations had no power to surrender control of their stock to a board of trustees.¹ Further, most of the States as well as the federal government passed anti-trust laws. But the effect of judicial decisions, as well as of hostile legislation, was merely to cause a change in the form of combination. In some cases, as with the Whiskey and Sugar Trusts, a single immense corporation was formed which undertook to secure a monopoly by buying out numerous smaller concerns. In other cases, as with the Standard Oil Company, those who directed its policy obtained a majority of the stock in several large corporations, harmony of action being insured by having the same men in control of the affairs of each separate corporation.

**Change
in form**

At the present time the common form of combination is that of one great corporation owning many separate plants. The rapid formation of such combinations within the last twenty years constitutes the most striking fact in the economic world. Since their formation is largely due to the influence of modern capitalistic production, these combinations are usually called capitalistic monopolies.

**Capitalistic
monopolies**

The chief advantages claimed for the great industrial combinations are that they avoid the wastes of excessive competition, and secure the economies of large-scale production. The principal objections urged against them are that they crush out competition, often by unfair methods, and secure a monopoly control which enables them to charge monopoly prices. Another objection is that their capital is often excessive, thus necessitating high prices to the consumer in order that dividends may be paid upon watered stock. Widely divergent views are held as to the course which government should take concerning capitalistic monopolies. Many persons favor radical action which will entirely destroy them; while others believe that trusts should be so regulated by law that their good features may be retained, and their evil practices abolished. It is generally conceded that effective action in this direction is only possible through the agency of the federal government, which has power to regulate all corporations engaged in foreign or interstate commerce.

**Advantages
and evils**

212. Transportation — Roads and Bridges. Since in modern times commerce is essentially a matter of transportation, the construction and maintenance of roads and bridges is one of the most important

**Road-build-
ing and
maintenance**

¹ State of New York v. The North River Sugar Refining Co., 121 N. Y. 582.

ant functions exercised under State authority.¹ Supervision of road construction is commonly entrusted to locally elected county or township commissioners. The township commissioners ordinarily have authority to divide the township into several road districts, in each of which an overseer is chosen who acts under the authority of the township officers. It is the duty of the commissioners to keep in repair the existing roads and bridges, and to construct new ones upon the petition of a certain number of freeholders. Under the power of eminent domain, private property may be appropriated for such construction upon making proper compensation to the owner. A part of the cost of construction is commonly assessed upon the abutting land-owners, the remainder being paid out of the local treasury. The cost of maintenance is commonly borne in the same way; and many States still permit the road-tax to be paid by a certain number of days' labor on the road — a policy scarcely conducive to expert construction.

The inferior results of local road-making have led a number of commonwealths to coöperate in this work by creating the office of State commissioner, charged with general supervision of road construction throughout the commonwealth. It is the duty of the commissioner to pass upon applications from local commissioners for new roads, also to furnish plans and award contracts, the cost being apportioned between the State and the local district.

Outside of the cities the construction of bridges is generally left to the county commissioners, subject to the requirement of the federal government that no bridge shall be built across a navigable river unless its construction is first approved by the Secretary of War.

¹ The only important road ever constructed by the federal government was the National or Cumberland Road, commenced in 1807, at Cumberland, Maryland, and finally extended westward to Vandalia, Illinois, a distance of about eight hundred miles. This road was well constructed and played a most important part in the settlement of the West. It has long since been turned over to the States through which it passes.

213. Canals and River Navigation. Nearly all the canals in the country have been constructed by the State governments, or by companies chartered by them. The **Canal construction** period of canal construction dates from 1825 (when the Erie Canal was completed) to about 1840, at which time attention was diverted to railroad building. The construction of canals contributed greatly to the early development of the commonwealths in which they were located, and for some time their competition served as a check upon railroad rates; but with few exceptions they have now been abandoned, the railway having proven too formidable a competitor.¹

General supervision of canals is ordinarily exercised by the State board of public works, or canal board. The **Supervision** executive officer in direct charge of the system is the superintendent of public works or the State engineer. This officer with his assistants looks after necessary repairs, enforces the rules of navigation, and investigates improvement projects.

River navigation is also generally subject to State supervision under police regulations designed to safeguard the public. Enforcement of these regulations is sometimes entrusted to the State superintendent of public works. **River navigation**

214. Weights and Measures. Commerce is greatly aided by the use of accurate and uniform standards of value and of weights and measures. The **State control** establishment and regulation of the standard of value is an exclusive function of the federal government. While Congress may likewise exercise exclusive authority over the subject of weights and measures, it has not as yet

¹ Since 1850 the only new canals of importance are the Illinois and Mississippi, and the Chicago Sanitary and Ship Canal; but large sums have been spent in improving the Erie Canal. In all there are forty-two hundred miles of canals in the United States, located in New York, Pennsylvania, Ohio, Virginia, New Jersey, Delaware, Maryland, Indiana, Illinois, and Michigan; but many of these have fallen into disuse. Besides those mentioned, the other principal canals are the Illinois and Michigan, the Chesapeake and Ohio, the Wabash and Erie, and the Sault Sainte Marie.



THE SAULT STE. MARIE SHIP CANAL



(By courtesy of the Commissioner of Bridges, New York City)

THE QUEENSBOROUGH BRIDGE, NEW YORK

THE SAULT STE. MARIE SHIP CANAL

This canal connects the waters of Lake Superior with those of St. Mary's River and Lake Huron, around the falls in the river. It is about three miles in length, and has two locks, the larger of which is 800 feet long and 100 feet wide. The depth of water throughout the canal is sufficient to allow the passage of vessels drawing 21 feet (or of about 12,000 tons displacement). The railway bridge, a portion of which is shown in the distance, is one mile long and connects the Northern Pacific and the Canadian Pacific Railroads, by the Sault, or "Soo" branch line.

THE QUEENSBOROUGH BRIDGE, NEW YORK

Connecting Manhattan Borough and Queen's Borough, Long Island. The Bridge was opened to the public March 30, 1909. The cost of construction was \$12,600,000 ; property acquired for approaches, etc., cost \$4,400,000. The bridge is of the cantilever type, and consists of two spans over the branches of the East River of 1182 and 984 feet, one over Blackwell's Island of 630 feet and two anchor arms, 469 and 459 feet respectively. Only four bridges in existence—the cantilever bridge over the Firth of Forth, Scotland, and three suspension bridges (the Brooklyn, the Williamsburg, and the Manhattan, all in New York)—are of greater span than the longest span of this bridge. The length of the Manhattan approach is 1052 feet, and of the Queens, 2673, so that the total length of the bridge and its approaches is 7449 feet. The outside width is 89½ feet. The bridge has on the upper floor two foot walks and provision for two elevated railway tracks. On the lower floor between the trusses there is a roadway 53 feet wide, upon which are two surface railway tracks, one track on each side of the roadway ; and outside of the trusses are two other surface railway tracks. The elevated and surface railways have a combined capacity of 120,000 passengers per hour in one direction. The clear height of the bridge above mean high water over the channels in the river is 135 feet. The elevation of the top of the flag poles on the towers on Blackwell's Island (in the foreground in the photograph) is 406 feet.

done so, and hence the establishment of these standards is a State function. In 1836 Congress instructed the Secretary of the Treasury to deliver to the governors of the respective States complete sets of the standards of weights and measures used in the federal custom-house, thus making possible a uniform system. The State standards are generally in the custody of a State sealer or superintendent of weights and measures. From this officer copies may be obtained for the use of county sealers, who in turn furnish copies for the use of local officials.

215. Trade-marks. In order to encourage the production of a high quality of goods and to protect manufacturers against dishonest competition, the State governments grant proprietary rights in the use Purpose of private brands, labels, and trade-marks. When such brands or marks are regularly advertised by one manufacturer, they cannot be legally used by another, and thus both the manufacturer and the consumer are protected.

GENERAL REFERENCES

- Alexander, William, *The Life Insurance Company* (1905).
 Beard, C. A., *American Government and Politics* (1910), pp. 721-742.
 ——— *Readings in American Government and Politics* (1910), ch. XXXII.
 Blackmar, F. W., *Economics for High Schools* (1907), chs. XIII-XV, XXIX, XXXI.
 Bullock, C. J., *Introduction to the Study of Economics* (1900), chs. XI, XIV, XVI.
 Collier, W. M., *The Trusts* (1900).
 Ely, R. T., *Monopolies and Trusts* (1900).
 Farrer, T. H., *The State in its Relation to Trade* (1902).
 Fiske, A. K., *The Modern Bank* (1909).
 Hadley, A. T., *Railroad Transportation* (1903), ch. VI.
 Hart, A. B., *Actual Government* (1903), chs. XVIII, XXVI-XXVII.
 Hobson, J. A., *The Evolution of Modern Capitalism* (1894).
 Holmes, G. K., "State Control of Corporations" (1890), *Political Science Quarterly*, v, pp. 411-437.
 Interstate Commerce Commission, *Railways in the United States in 1902*, part IV (State Regulation of Railways).
 Jenks, J. W., *The Trust Problem* (1909).
 Jevons, Wm. S., *The State in Relation to Labor* (1894).
 Johnson, Emory R., *American Railway Transportation* (1909), chs. VI, XV-XVIII, XXV, XXVII.
 ——— *Ocean and Inland Water Transportation* (1909), chs. XXIV-XXIX.

McVey, Frank L., *Modern Industrialism* (1908).

Meyer, B. H., *Railway Legislation in the United States* (1903).

Nearing, Scott, and Watson, F. D., *Economics* (1908), pp. 60-309.

Ripley, W. Z., *Trusts, Pools, and Combinations* (1905).

Wright, C. D., *Practical Sociology* (1899), part v.

QUESTIONS AND EXERCISES

1. Prepare a report on the policy of your State in disposing of its public lands.
2. What public lands are now owned by your State? Have any steps been taken toward forest preservation?
3. Explain the object of fish and game laws. Who enforces these measures in your commonwealth?
4. Is your State department of agriculture in charge of a commissioner or board? Examine the last report of this department, and write a short paper upon its work.
5. Who is at the head of your State labor bureau? Examine the report of this department and explain the functions performed.
6. Prepare a report upon the factory legislation in force in your State, paying especial attention to the restrictions upon the labor of women and children.
7. Is there a State board of arbitration in your commonwealth? How is it composed? Has it been successful in settling industrial disputes?
8. What strikes occurred in your State last year? What percentage of these were successful? (See report of Bureau of Labor.)
9. Prepare a report upon the use of the injunction in connection with labor disputes.
10. What is the average daily wage of workmen in your State? Is this average increasing or decreasing?
11. What are the common hours of labor in the various industries in your State? What are the chief arguments in favor of an eight-hour day as compared with one of ten or twelve hours?
12. Is there a free public employment office in your community? What work does it perform?
13. How are private corporations chartered in your commonwealth? May the legislature modify the charter?
14. Prepare a report on the Dartmouth College case (4 Wheat. 518; Thayer's Cases, II, 1564).
15. What annual reports are required from corporations in your State? Is there an annual tax upon capital stock or earnings?
16. (a) Prepare a report outlining the principal measures adopted by your State government for the regulation of banks. (b) A similar report concerning insurance companies. (c) A similar report concerning railway regulation in your State.
17. What is a trust? Outline the law of your State concerning trusts.
18. Prepare a report showing (a) the wastes of excessive competition, and (b) the advantages of large-scale production. (Jenks, J. W., *The Trust Problem*.)
19. Explain how the division of powers between the federal and State governments has made State control of railways and trusts largely ineffectual.

20. Name several partnerships in your community; several corporations. Name five of the largest industrial combinations (commonly called trusts) in the United States.
21. Who has charge of road-making in your commonwealth? Does the State supervise road construction or bear part of the cost?
22. Are there any canals in your State? What officers have charge of them? When were they constructed? What was the cost of maintenance last year?
23. What regulations have been adopted by your State government concerning river navigation? Who enforces these regulations?
24. Give the provisions of your State law concerning (a) weights and measures; (b) trade-marks.

CHAPTER XVI

PUBLIC EDUCATION

216. Early and Modern Education. Between early and modern systems of education two striking differences appear. From the first century A.D. down to the very beginning of the nineteenth century, education was almost universally controlled by the church, and was confined to the wealthier classes; while to-day education is generally recognized as a function of the State, and its benefits are freely offered to all children, the expense being borne by the community. Nowhere has this modern conception of free public education been more fully realized than in the United States.

217. State Control of Education. During our colonial history, schools and colleges were fostered by the individual colonies, and hence upon the adoption of the federal constitution, control of public instruction was one of the functions retained by the State governments. It will be seen later that the federal government has aided the cause of education in a substantial manner; but the actual control and maintenance of the public schools is a State, not a federal, function. State educational systems vary widely in character, but generally include: (1) a system of elementary or common schools; (2) a system of secondary or high schools; and (3), in three fourths of the commonwealths, a State university.

218. Elementary or Common Schools. Elementary or common schools are found in every section of the United States, however sparsely inhabited. Elementary education ordinarily includes the first eight grades of the course of study, occupying the child from

the sixth to the fourteenth year. This period is frequently subdivided into the primary department, comprising the first four grades; the intermediate department, including the fifth and sixth grades; and the grammar department, or seventh and eighth grades. Where elementary schools are fully graded, there is generally a separate room for each of the eight grades, promotions from one room to another being an annual or semi-annual event.

The course of study in the elementary schools ordinarily includes reading, writing, arithmetic, spelling, language, grammar, geography, and history; and in progressive school systems, instruction is also provided in natural science, drawing, vocal music, physical culture, and manual training.

Public interest in educational affairs has usually centered upon the elementary schools, owing to the fact that nearly ninety per cent of the entire number of pupils are enrolled in the grammar grades. As training schools for the duties of citizenship our common schools are probably unequaled by those of any other country. Two of the great advantages justly claimed for the American public-school system are: first, the development of individual character by massing children from all walks of life in common association, thereby compelling each child to take the rough-and-tumble of life in competition with every other; and second, the Americanizing influence upon foreigners whose children in the public schools learn our language and the principles of American institutions, thus making less difficult the problem of assimilation.

At the present time there are enrolled in the common schools of the United States over 17,000,000 pupils, or about twenty per cent of the total population. Within the last thirty years the number of schoolhouses as well as the revenues for school purposes have more than doubled; the number of days attended by pupils has in-

Course
of study

Advantages
of public-
school
training

Educational
progress

creased one fourth; while the percentage of illiterates has decreased from seventeen per cent in 1880 to about ten per cent at the present time.

219. High School or Secondary Education. Secondary education (comprising the ninth, tenth, eleventh, and twelfth years of the course of instruction) is carried on chiefly in public high schools, which in their present form are a product of the nineteenth century.¹ Previous to 1850, only eighteen public high schools had been established in the United States, the earliest being the English Classical School at Boston (1821). Since 1850, public high schools have multiplied rapidly, until in 1909 the total number of such institutions was 9317, with 841,273 students. Several States, including Massachusetts, Maryland, Wisconsin, Minnesota, and California, require each township to maintain a free public high school. Elsewhere the establishment of such institutions is optional with the localities, although the constitutions of at least half the commonwealths mention high schools as special subjects of legislative and general interest.

The high-school course ordinarily comprises four years, following eight years of work in the elementary school. Under ordinary conditions pupils reach high school at the age of fourteen, completing the course at about eighteen. Most public high schools receive and educate both sexes in the same classrooms and under the same teachers, although a few of the larger cities provide separate high schools for each sex.

The modern high school is sometimes called the "people's college," and in range of studies and thoroughness of work, good high schools of to-day doubtless surpass even the best colleges of fifty years ago. The best high schools now serve the double function of fitting students for the

¹ In the earlier colonial period, secondary instruction was given in what were called grammar schools, later superseded by the academies. As secondary schools the academies have in turn been largely supplanted by the public high schools.



BOSTON PUBLIC LIBRARY

There are 28 Branch Libraries and Reading Rooms. The Library gives free lecture courses with special regard to the æsthetic development of cities, and coöperates with the colleges in their University Extension Courses, and with the schools, loaning pictures, as well as books, to teachers for use in their work.



(By courtesy of the Superintendent of Public Schools, St. Louis)

THE SOLDAN HIGH SCHOOL, ST. LOUIS, MISSOURI

Observatory
College of Agriculture
Chemistry Bldg.

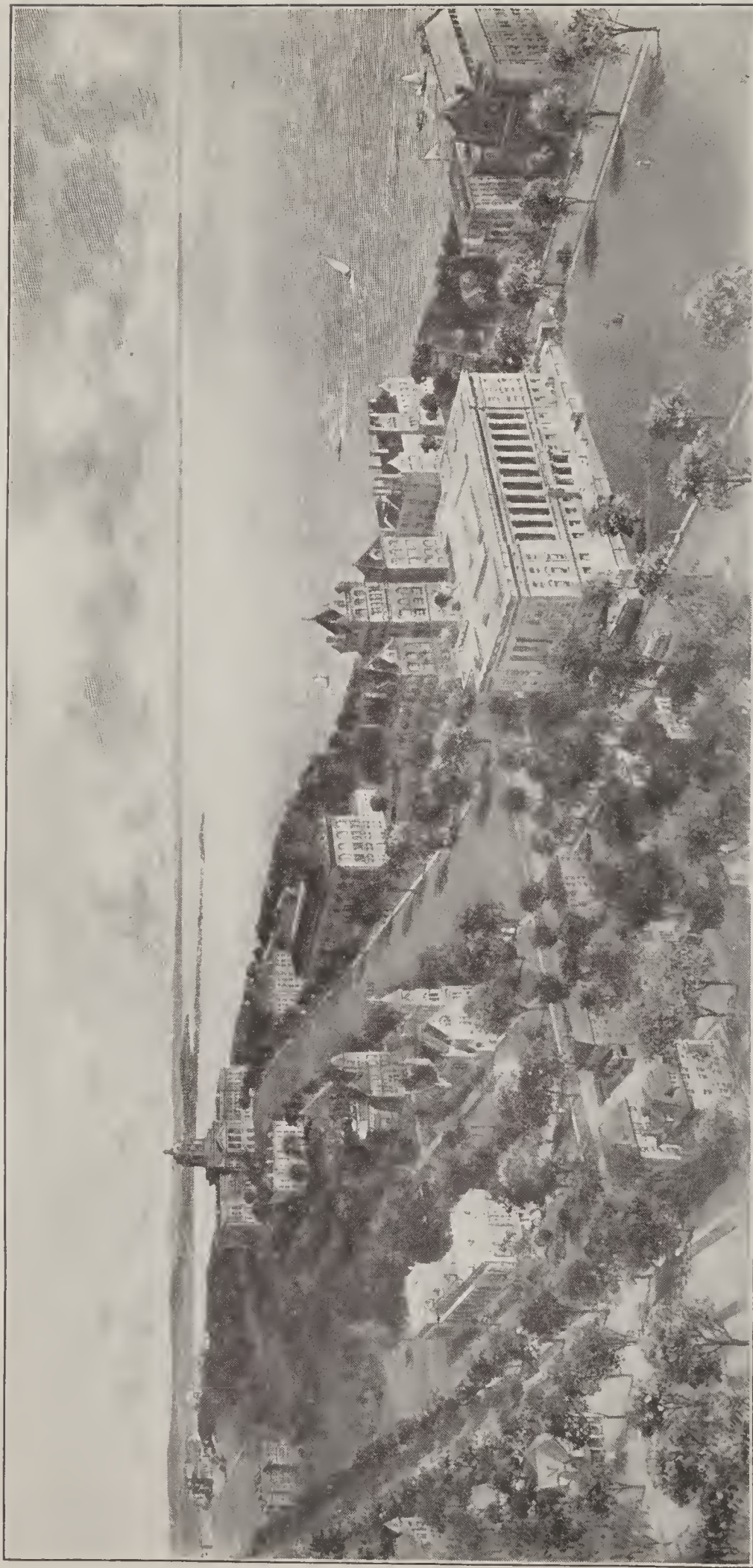
University Hall
South Hall

North Hall Engineering Bldg.

Science Hall

Chemical Eng. Bldg.

Y.M.C.A. Gymnasium



Chadbourne Hall
(Women's Dormitory)

Law Building
Chapel or Music Hall

Administration
Building

State Historical Society
and University Library

Copyrighted 1907. Reproduced by permission of
W. T. Lattig & Co., N.Y.

BIRD'S-EYE VIEW OF THE UNIVERSITY OF WISCONSIN

everyday duties of life, and of preparing their graduates to meet university entrance requirements. To accomplish this, most schools offer several courses of study from which the student may choose the one which he wishes to follow, such as the classical course, the modern language course, the scientific, commercial, or manual-training course. Among the typical subjects taught in secondary schools may be mentioned English and English literature, Latin, German, French, algebra, geometry, history, civics, botany, physiology, physiography, chemistry, and physics. Within recent years the high-school curriculum has been greatly broadened through the introduction of manual training and commercial subjects, largely owing to the demand that the secondary schools afford a practical training for life. Many municipalities have expended large sums for separate manual training and commercial high schools, while in other cities these subjects are included among the many departments of a "cosmopolitan" high school.

220. Colleges and Universities. The five hundred colleges and universities of the United States may be grouped into three classes. (1) Non-sectarian institutions chartered by the State governments as private corporations, such as Harvard, Cornell, and Leland Stanford. (2) Denominational institutions likewise chartered as private corporations, but which are under ecclesiastical control or supervision, as Georgetown and Wesleyan universities. (3) Universities and colleges established by the State governments as public institutions and directly subject to State control, as the State universities of Michigan, Wisconsin, and California. The foremost colleges and universities of the country are included in the first or third classes, being non-sectarian in character; but in numbers the institutions under church control are in the majority.

221. The State University. In the earlier period of our history, nearly all the institutions of higher education were chartered as private corporations, although often receiving aid from the State in the form of land or money, or exemption from taxation. With the growth of the democratic spirit of the nineteenth century, considerable opposition was manifested toward granting pub-

lic aid to institutions which were subject not to public control, but to that of some denomination or sect; and the belief that the State should control higher as well as elementary education led to the establishment of the State universities. In this movement the Southern States took the lead, their example being soon afterwards followed by Indiana (1820), and Michigan (1837). East of the Alleghanies the private institutions had become so firmly established as to leave no place for State universities;¹ but "the establishment of State universities in the West and South came as a matter of course, and has kept pace with the stars on the flag."²

The twenty-seven States formed out of the public lands received from the federal government a donation generally consisting of two complete townships³ (seventy-two square miles of land) for the support of higher education.⁴ Again in 1862 the State universities received substantial federal aid through the enactment by Congress of the Morrill Act granting to each State in the Union, and to each State afterwards admitted, 30,000 acres of land for each Representative and Senator in Congress. The income of the funds arising from the sale of this land was to form a permanent endowment for the support of higher institutions of learning in which technical and agricultural branches should be taught.⁵ Among the State universities owing their origin to the Morrill Act are those of California, Illinois, Maine, Minnesota, Nebraska, Nevada, West Virginia, and Wyoming. By acts passed in 1887 and in 1890, the federal government gave further aid to agricultural and mechanical education by granting an annual appropriation of \$25,000⁶ to each State maintaining an institution of this character.

In all, thirty-six commonwealths now maintain State universities, and these enroll about one third of the entire number of university students. Six of the ten largest universities of the coun-

¹ Maine and Virginia have State universities.

² Dexter, E. G., *History of Education in the United States*, p. 282.

³ Ohio received three townships, Florida and Wisconsin four each, Minnesota three and one half, and the other public-land States two each.

⁴ In many of the older commonwealths a large part of this splendid endowment was wasted through mismanagement and political jobbery.

⁵ The amount raised from the sale of these lands ranged in the different States from \$50,000 to \$750,000.

⁶ Commencing in 1908 this appropriation is to be increased at the rate of \$5000 per annum until it reaches \$50,000.

try are State institutions. All are co-educational, and in all tuition is practically free¹ to residents of the State. The income is derived in part from the proceeds of the federal land grants, but chiefly from the "mill tax," or general appropriation authorized by the State legislature. The State university is commonly organized into a number of colleges, as the college of arts, agriculture, engineering, law, medicine, veterinary medicine, and pharmacy. The control is vested in a board of trustees or regents,² who elect a president as the executive head of the institution, and upon his recommendation choose the professors and instructors.

Character-
istics

State universities are commonly in organic relation with the high schools of the commonwealth, and by the accrediting system graduates of approved high schools pass directly into the universities without taking entrance examinations. Thus the State universities crown the educational system provided by the State; and the fact that they are supported by the resources of the State, together with the broad policy which has characterized their administration, apparently assures them a position of increasing influence among institutions of higher learning.

Relation to
high schools

222. Administration of Public Schools. The organization of the common-school system varies widely among the different States, and often there is great diversity even in different parts of the same State. This is owing to the fact that in its origin school administration was exceedingly local in character, and only gradually is it becoming unified through the exercise of State authority. The organization and control of the public schools is generally a function either of the school district, the township, the city, or the county. Accordingly there are four distinct types of school administration: the district, township, city, and county systems. Administration of the schools by each of these local areas is at all times subject to modification and control by the paramount authority of the State government.

223. The District System. The district system had its

¹ Except in the professional departments, such as the law, medical, and engineering colleges.

² Commonly appointed by the governor, although sometimes elected by popular vote.

origin in colonial New England, where each little settlement formed a natural nucleus for school administration. As the population moved westward, the same district system was created, and in some form still prevails in the great majority of the States. The district is the smallest unit of school administration, and is the most democratic feature of our political organization. In the South it is usually a subdivision of the county; elsewhere of the town or township. Generally the voters within the district elect the school trustees and levy the school tax, although in some States these functions are performed by the county. The great merit of the district system in the early period of our history was that it brought the public schools easily within the reach of all; but under present conditions this system is often wasteful and inefficient, owing to the small size of the administrative unit. The present tendency is to replace the district by a larger unit of organization, such as the township.¹

Origin and characteristics **224 The Township System.** Under the township system all schools within the boundaries of the township are placed under the control of a single board chosen by the voters. By this plan there are fewer schools, but these are better graded and equipped; and with the expenditure of less money better salaries can be paid, and better teachers secured. In six commonwealths the plan of township organization has been made compulsory, while in at least twenty others² there is permissive legislation providing for this or some similar form of centralization.

Characteristic features The township system tends to create two distinct classes of schools: first, centralized rural schools conveniently located throughout the township, generally graded to a certain extent, and having two or more

Types of schools ¹ In Maine, New Hampshire, Vermont, Massachusetts, New Jersey, and Indiana, the district plan has been entirely superseded by the township system.

² Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, Ohio, New York, North Carolina, the Dakotas, Pennsylvania, Rhode Island, Tennessee, and Wisconsin.



A modern township school-building as provided under the "centralization plan."



Pupils of the primary and grammar grades as they go to school in Gustavus Township, Trumbull County, Ohio. A stage is required to stop at each child's home; and if the pupil is not ready to go to school he is marked "tardy."



Typical schoolhouse in irrigated district near Billings, Mont. Schools are among the first buildings erected on newly opened lands. They are so distributed that no child is out of reach. The sheds at the left are for the pupils' ponies.



(By courtesy of the Superintendent of Public Schools, New York City)

PUBLIC SCHOOL 165, NEW YORK CITY



(By courtesy of the Superintendent of Schools, Philadelphia)

THE GROVER CLEVELAND SCHOOL, PHILADELPHIA

TYPES OF MODERN CITY SCHOOLS

teachers; and second, township or union high schools, which constitute practically the only means of furnishing secondary education to the children in rural communities.

This centralization of rural schools gives rise to the problem of free transportation of pupils. With but three or four schools for the entire township, considerable distances must be traveled by many of the pupils; and this has led many commonwealths to provide free transportation of pupils.

Transporta-
tion of
pupils

225. City School Systems. Cities commonly have a system of schools separate from that of the township and county in which they are situated. In other words, the city itself ordinarily constitutes a special school district under general provisions of the school law relating to municipalities, or under special charters granted by the legislature. Great diversity prevails in the organization of schools in the various cities: but universally the administration is entrusted to a board of education (generally chosen by the voters), and a superintendent of schools who is the executive officer of the board. In organization, equipment, and supervision, city schools constitute the most highly developed type of our educational system.¹

Organization
and control

226. The County System. Throughout the South, the county serves as the basis of school administration. In some States, as in Georgia and Maryland, the county itself constitutes a single school district; in other commonwealths it is generally subdivided for school administration, the smaller divisions being subject to county authority. Accordingly, county officials build schoolhouses, appoint teachers, and levy school taxes — functions which throughout the greater part of the Union are vested in district or township school boards.²

Administra-
tion in the
South

For the supervision of rural schools, most States outside

¹ See Section 79.

² Ten States, all Southern, except Utah, have the county system. These are Alabama, Florida, Georgia, Louisiana, Mississippi, Maryland, North Carolina, Tennessee, South Carolina, and Utah.

of New England have created the office of county superintendent or school commissioner. **County supervision** County superintendents are generally elected by popular vote, although in some commonwealths the office is an appointive one.

227. State Administration of Schools. State control of education is exercised in two ways: (1) through legislation, **Means of control** by general school laws for the entire State, or by special laws applying to certain localities; and (2) through State administrative officers, who exercise certain supervisory powers over the public schools.

Each commonwealth has an officer, generally known as the State superintendent of public instruction,¹ who nominally is the head of the public-school system of the State. In a few commonwealths, as in New York and Pennsylvania, this officer has important powers, so that he may be regarded as the actual head of the State school system. But in most commonwealths his powers are limited to investigation and admonition, while in several he is little more than a clerk charged with the collection and publication of educational statistics. The State superintendent is elected by popular vote in thirty-three commonwealths, and this fact has tended to make the office political in character, rather than professional. In thirteen other commonwealths the State superintendent is appointed either by the governor, the general assembly, or by the State board of education.² The common term is either two or four years.

About three fourths of the commonwealths have State boards of education, with powers which vary as widely **State boards of education** as those of the several State superintendents. In New York, Massachusetts, and Connecticut, the State board has large powers; elsewhere its duties often

¹ Also called the superintendent or commissioner of common or public schools.

² By the governor in Maine, Minnesota, New Hampshire, New Jersey, Oklahoma, Pennsylvania, Tennessee; by the general assembly in New York, Rhode Island, Vermont, and Virginia; and by the board of education in Connecticut and Massachusetts.

are confined to the examination and certification of teachers.

228. Text-Books. The adoption of suitable text-books is one of the most important matters connected with school administration. In fifteen States¹ uniform text-books are used throughout the commonwealth, these being chosen **Selection** either by the State boards of education, or by special text-book commissions. In eight others,² county uniformity prevails; while in the remainder, the local boards ordinarily select the books to be used in each school district.

In practically all the States, text-books are provided free to indigent children. In eleven States³ they must be furnished free to all pupils, while in fourteen others⁴ they **Free text-books** may be so furnished at the option of the local board of education, or upon authorization by a local popular vote.

229. Employment and Certification of Teachers. The employment of teachers is a function of the local school boards, although the superintendent often has the power to appoint teachers subject to the board's confirmation. A license or certificate is universally required before one is eligible to teach in the public schools. In New England certificates are granted by the school committees of the town; elsewhere they are granted by county or city examining boards, or by the county superintendent. The qualifications required of teachers are being made continually higher, the tendency being to demand at least a normal-school training for elementary teachers, and a thorough college course, including professional training, for those employed in secondary schools.

230. Compulsory Education. About three fourths of the States have compulsory education laws which ordinarily require children from eight to fourteen years of age to attend school a certain number of weeks **Object and effect** each year.⁵ The penalty imposed on parents for neglect of

¹ California, Delaware (except Wilmington), Idaho, Indiana (elementary and grammar grades), Kansas, Louisiana, Missouri, Montana, Nevada, Oregon, South Carolina, Utah, Virginia, Texas, Tennessee.

² Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, South Dakota, West Virginia.

³ Maine, Delaware, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, and Wyoming.

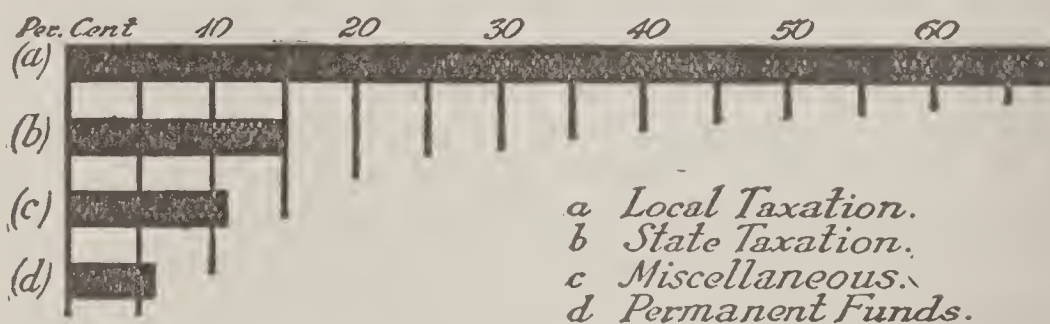
⁴ Colorado, Connecticut, Idaho, Iowa, Kansas, Michigan, Minnesota, Montana, New York (in union districts), North Dakota, Ohio, South Dakota, Washington, and Wisconsin.

⁵ Nearly all the States also prohibit children under a certain age — commonly fourteen years — from engaging in certain dangerous employments — in mines, workshops, and fac-

these statutes is a fine ranging from five to fifty dollars. The object of compulsory education laws is to protect the State from ignorance and illiteracy by assuring each child at least the elements of an education. That such laws are fairly effective is shown by the fact that seventy per cent of the total school population (five to eighteen years) is enrolled in the public schools. In cities the enforcement of compulsory educational laws is commonly entrusted to truant officers employed by boards of education.

231. School Revenues. The total annual expenditure on common schools in the United States is nearly \$400,000,000.

Sources This revenue is derived from four sources: first, local taxation, which yields 68 per cent of the total; second, State taxation, which furnishes 15 per cent; third, miscellaneous sources, about 11 per cent; and fourth, the income from permanent funds and endowments, which yields about 6 per cent.



SOURCES OF SCHOOL REVENUES

Local taxation is thus the principal source of school revenue throughout the Union. The amount of this local tax is generally voted by the legislative authority of the county or township, or by the district board of education. Frequently State laws fix the minimum and maximum amounts to be raised, leaving to local authorities discretion within these limits.

The amount raised by State taxation varies greatly in the different commonwealths. Some levy no State tax whatever for this purpose, while in others State taxes are relied on to raise three

tories. Enforcement of these child-labor laws is generally entrusted to the State inspector of mines and factories.

fourths of the school revenues. The amount raised by State taxation is largest in the South and the Far West, while elsewhere local taxes are chiefly relied on. State taxation is especially advantageous to the poorer sections of the commonwealth, where lack of such revenue would result in schools of low grade. State taxation

Miscellaneous sources consist of revenues from fines, licenses, penalties, and special taxes, which in some States are devoted to the support of the schools. The permanent funds available for the support of public schools are derived chiefly from the public-land endowment granted by the federal government.

232. **Federal Aid to Public Education.** By the famous land ordinance of 1785, the federal government provided for the reservation of section sixteen in each township for the maintenance of the public schools. Beginning with Ohio in 1802, each of the public-land States accordingly received section sixteen in every township; while each commonwealth admitted after 1848 received two sections.¹ Title to these lands was vested in the State legislature in trust for the purpose named, and the proceeds arising from their sale was to constitute a permanent endowment fund, the interest to be applied to the support of the public schools. The entire amount turned over to the States was 67,893,918 acres, which, at the traditional price of \$1.25 per acre, gave a perpetual endowment of nearly \$85,000,000. Land grants

This fund has been increased in various ways. Many States have received salt and swamp lands, and part of the proceeds of lands sold within their boundaries, thereby increasing the permanent school fund. In 1836 the twenty-seven States then in the Union shared in the distribution by the federal government of \$42,000,000; and sixteen of them turned over their quotas in whole or in part to the school fund. The national government owned no lands in the original thirteen States, or in the States formed out of them, or in Texas. Hence these commonwealths did not share in the land grants mentioned, but many of them have set aside a portion of their own lands, and in various other ways created permanent school funds. Other aid

¹ Utah received four sections. 4

The common method of distributing the revenue from State funds is for State officials to apportion it among the counties; the counties divide it among the townships according to the number of school youth between certain ages (from four to sixteen, five to eighteen, or six to twenty-one). Thus each school district shares in the proceeds from the permanent fund according to the number of children of school age residing within the district.

Distribution of State revenue 233. **Educational Work of the Federal Government.** In addition to the generous land and money grants in support of the State school systems, the federal government has aided education by the establishment in 1867 of a **Bureau of Education**. It is the duty of the commissioner at the head of this bureau to collect and publish statistics concerning the schools of the United States; and his office publishes an annual report, as well as monographs of great value. The federal government maintains the system of city schools in Washington, D. C.; provides academies at Annapolis and West Point for the education of naval and army officers; maintains schools for the Indians; and supports the Smithsonian Institute, a naval observatory, the geological survey, and other scientific establishments educational in character.

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), pp. 371-375.
 Beard, C. A., *American Government and Politics* (1910), pp. 624-627, 746-751.
 Bliss, W. D. P., and others, *Encyclopedia of Social Reform* (1908); article on Education.
 Boone, R. G., *Education in the United States* (1889).
 Bryce, James, *The American Commonwealth* (1907), II, ch. cv.
 Dexter, E. G., *History of Education in the United States* (1906).
 Draper, A. S., *American Education* (1909).
 Dutton, S. T., and Snedden, David, *The Administration of Public Education in the United States* (1909).
 Eliot, C. W., *American Contributions to Civilization* (1897), nos. II, VIII, IX.
 Forman, S. E., *Advanced Civics* (1905), ch. XLVI.
 Giddings, F. H., *Democracy and Empire* (1900), ch. XIV.
 Hart, A. B., *Actual Government* (1903), ch. XXVIII.
 Hinsdale, B. A., *The American Government* (1900), ch. LVI.
 James, J. A., and Sanford, A. H., *Government in State and Nation* (1903), ch. IX.
 Münsterberg, Hugo, *The Americans* (1904), pp. 365-424.
 Rice, J. M., *Public School System of the United States*.
 Wright, Carroll D., *Outline of Practical Sociology* (1899), ch. XI.

QUESTIONS AND EXERCISES

1. Quote any provisions of your State constitution concerning free schools or public education.
2. What are the boundaries of the school district in which you live? How many children of school age within this district? How many are enrolled in the public schools?
3. How many members comprise your board of education or school trustees? How chosen? Term? Name the members.
4. Describe the powers of this board: (a) to levy school taxes; (b) to elect a superintendent and teachers; (c) to purchase school sites and erect buildings; (d) to perform other functions of school administration.
5. What amount was expended by your district last year for the support of its schools? How much per pupil? How does this compare with the per capita expenditure in other districts of your State?
6. Is a State school tax levied in your commonwealth? If so, how much revenue did your district derive from this source last year?
7. What amount of school revenue is derived from local taxation in your district? What is the rate of the local tax for school purposes?
8. What is the bonded indebtedness of your school district? For what purpose were these bonds issued?
9. Is there a law in your State compelling children of a certain age to attend school? If so, during what ages is such attendance required and for what term each year? What is the penalty for violation of this law, and upon whom imposed? Who enforces the compulsory education laws?
10. Explain the great importance of public education in a democracy.
11. What obligations do pupils owe to their school? Do they owe any obligation to the community which provides them with free public education?
12. How many high schools in your district? Number of pupils enrolled? Compare the course of study with that outlined in the text.
13. Is there county supervision of rural schools in your commonwealth? How is the county superintendent chosen? How are schools supervised in your district?
14. Are text-books furnished free to all pupils in your district? If so, state whether this is required throughout the State, or is optional with local authorities. Give the chief arguments for and against free text-books.
15. Do you have uniform text-books throughout your State? What are the advantages and disadvantages of this policy?
16. What authority grants teachers' certificates in your district?
17. In what ways does your State government control the common-school system?
18. Who chooses your State superintendent of instruction (or commissioner of public schools)? What is his term? Describe his duties.
19. Is there a State board of education in your commonwealth? If so, state the number of members, method of appointment, and term.
20. Describe the powers of the State board of education with reference to: (a) examination and certification of teachers; (b) handling of State school funds; (c) holding teachers' institutes; (d) publication of school statistics; (e) preparation of courses of study and selection of text-books.
21. Name the principal universities and colleges in your State. Classify them into three groups as suggested in Section 220.

22. Are graduates of your high school admitted to these institutions on certificate, or are entrance examinations required?
23. Is there a State university in your commonwealth? If so, how many students are enrolled? Name the various colleges which comprise it. What does it cost the State to maintain it?
24. What aid to public education has your State received from the federal government?

CHAPTER XVII

STATE FINANCE

234. Definition of Finance. Public finance deals with the way in which government acquires and expends its means of subsistence; and hence the subject-matter of this chapter is public expenditure and public income. Under public expenditure we shall consider first, the general purposes for which all governments expend money; and second, the principal items of expenditure by State and local governments.

235. Purposes of Public Expenditures. Public expenditures may be classified on the basis of the functions which governments perform as (1) protective, (2) industrial, (3) humanitarian, and (4) cultural.¹

Protective functions are fundamental in character, including provision for defense, for internal security of person and property, and for protection against physical or social disease. The protective functions generally necessitate large military and naval expenditures, as well as those for courts and police systems.

The industrial functions of government include regulation of industry in the public interest by means of labor and factory laws, and inspection of food products; also provision for useful public works, as canals, roads, bridges, and light-houses; and finally, promotion of industry by means of subsidies, bounties, and technical education.

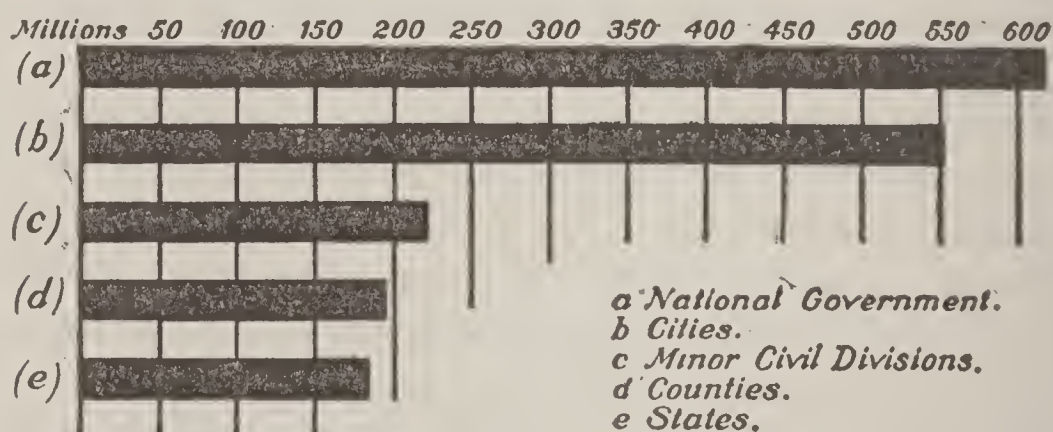
The humanitarian functions include those for the relief of the dependent and defective classes, as paupers, the insane, deaf, and blind; the aiding of sufferers from occasional calamities (as fire, earth-

¹ This classification of expenditures is that given by Professor F. M. Taylor of the University of Michigan.

quake, or flood); provision for elementary education; and in a few countries, state-assisted insurance.

The cultural functions are those which serve the higher wants, as physical culture and recreation, higher education, libraries, art museums, and scientific research.

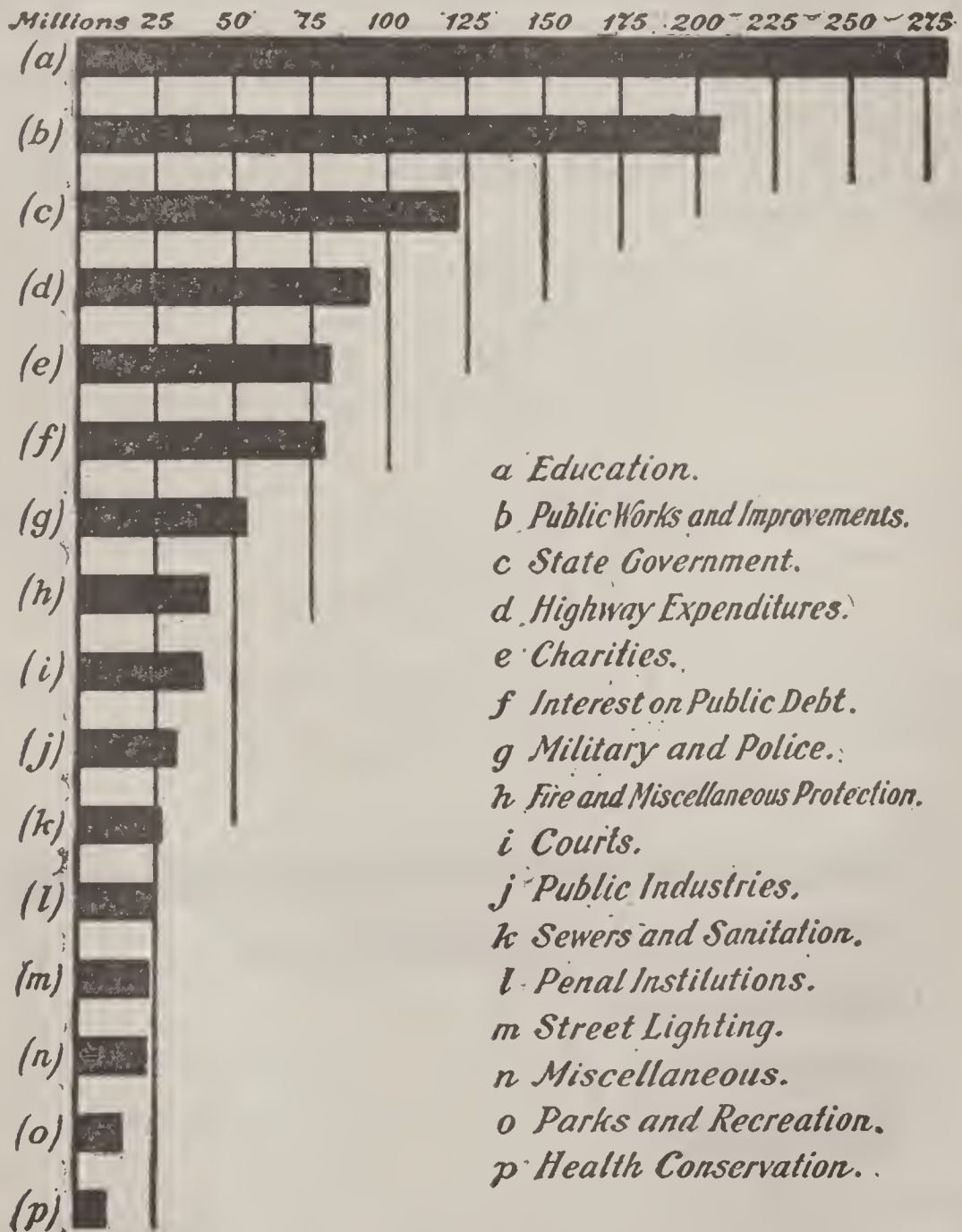
236. **Expenditures of National, State, and Local Governments.** The expenditures of the national government form about 35 per cent of the total governmental expenditures; those of the State governments about 10 per cent; while local expenditures comprise nearly 55 per cent. In other countries as well as in the United States, the expenditures of local governments form an increasing proportion of the aggregate governmental expenditure, owing to the number and importance of the functions which local units perform.



EXPENDITURES OF NATIONAL, STATE, AND LOCAL GOVERNMENTS

237. **State and Local Expenditures.** Under our system of government, the chief expense of administration is borne, not by the State government itself, but by its subdivisions, the counties, townships, and municipalities. Hence a comparatively small part of the total revenue levied and collected under State laws is taken by the commonwealth for its own purposes. The principal expenditures by State governments are for the maintenance of its executive, legislative, and judicial departments; for the State militia; for educational, charitable, and penal

institutions, as State universities, asylums for the blind and insane, and State prisons; for State buildings and public works; and for interest on the public debt. Upon local governments devolves the heavy expense of poor relief, schools and libraries, roads and bridges. In addition, city governments must provide police and fire protection, construct waterworks and sewer systems, pave and light the streets, and maintain public parks and playgrounds.

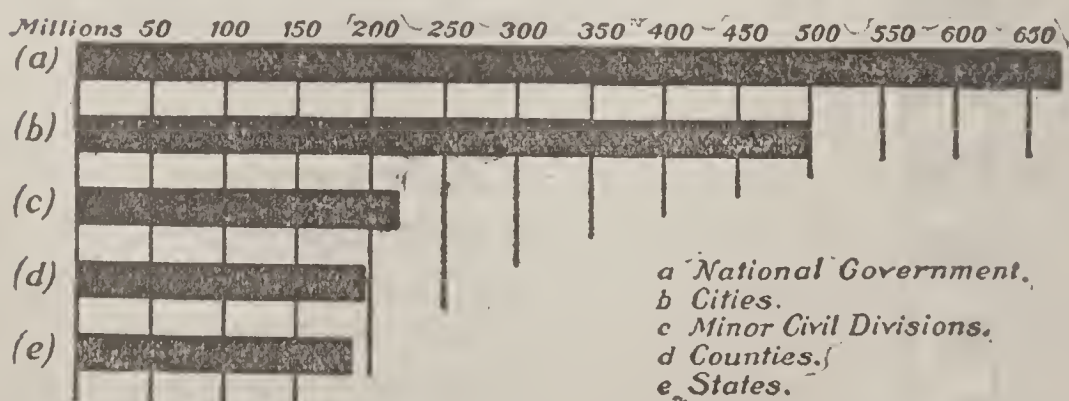


AMOUNT AND OBJECTS OF STATE AND LOCAL EXPENDITURES

238. **Sources of Public Revenue.** The expenditures of government, like those of individuals, are paid out of income or revenue; and the sources of public income may be grouped under three heads: (1) direct revenue, or that received from public ownership of productive property, or public management of productive industry, or revenue which accrues to government by virtue of its corporate character; (2) derivative revenue, derived from the private incomes of persons or corporations, and paid by them in satisfaction of some revenue law; (3) anticipatory revenue, or that secured by government through the use of its credit, to be afterwards repaid.

The following outline ¹ shows in detail the sources of public revenue: —

- | | | |
|-------------------------|---|---|
| 1. Direct revenue | { | <ul style="list-style-type: none"> a. Public domains b. Public industries c. Gratuities or gifts d. Confiscations and indemnities |
| 2. Derivative revenue | { | <ul style="list-style-type: none"> a. Taxes b. Fees c. Assessments d. Fines and penalties |
| 3. Anticipatory revenue | { | <ul style="list-style-type: none"> a. Sale of bonds or other forms of commercial credit b. Treasury notes |



RECEIPTS OF NATIONAL, STATE, AND LOCAL GOVERNMENTS

¹ Adams, H. C., *The Science of Finance*, p. 227.

239. Sources of Direct Revenue. In the United States, direct revenue forms a comparatively small part of public income. Many European countries own agricultural lands, mines, and forests, from which a considerable revenue is derived; but the policy of our government has been to transfer the public domain to individual settlers upon the theory that the national resources would be best developed in this way. Public domains

Many foreign governments also derive considerable direct revenue from public industries, as waterworks, gas and electric lighting-plants, street and steam railways, postal and telegraph systems; and also from industries monopolized by government as a means of revenue (fiscal monopolies).¹ In the United States municipal ownership of waterworks systems is common, and many cities also own electric-lighting plants; while the federal government owns and operates the postal system. These industries are often carried on at a loss, charges having been reduced to a low figure in order to encourage an extensive use of the commodity or service.² Public industries

240. Sources of Derivative Revenue. Fees and special assessments form a considerable source of derivative revenue, although relatively much less important than taxation proper. Fees are payments made to cover a part of the total cost of certain governmental activities performed for the benefit of all, but which confer a special benefit upon the individual. For example, there are judicial and legal fees, as court fees, the charges for recording deeds and mortgages, marriage-fees, and the like; administrative fees, including fees for education, when charged; and industrial and commercial fees, as road and canal tolls, harbor dues, and similar charges. Fees

Special assessments, also called "betterment" taxes, are closely related to fees. A special assessment has been defined by Professor Seligman as "a compulsory contribution paid once and for all to defray the cost Special assessments

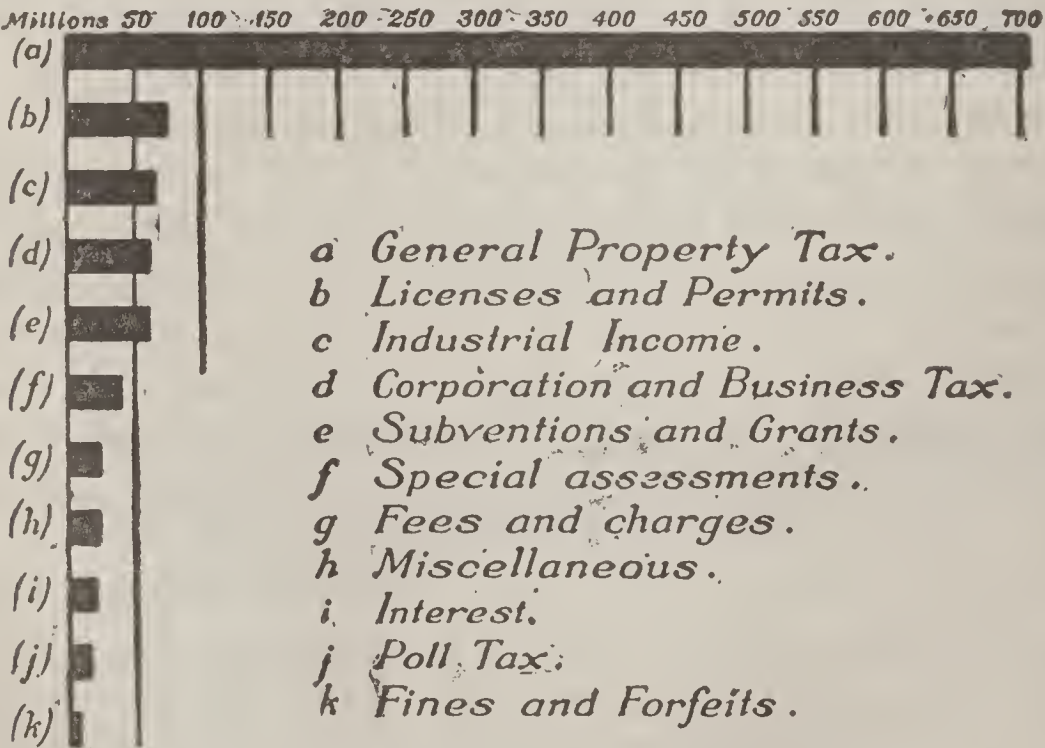
¹ As the government monopoly of the manufacture of tobacco in France, and of liquor in Russia.

² As in the case of the federal postal system, where the annual deficit commonly ranges from ten to fifteen million dollars.

of a specific improvement to property undertaken in the public interest, and levied by the government in proportion to the special benefits accruing to the property owner.” For example, when a street is paved, or when water-pipes or sewers are laid, in addition to the general public benefit there is a special benefit to the individual on whose property the improvement abuts; and hence it is customary to levy a special assessment covering part or all of the cost against the owners whose property receives the special benefit.

Taxes may be defined as “ratable burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes.”¹ The justification of taxation is the benefit which governments confer upon individuals. In return for the protection which they afford and the public functions fulfilled, governments may justly take from those benefited, through taxation, the means necessary for their support. Taxes are

Taxes



SOURCES OF STATE AND LOCAL REVENUES

¹ Black, H. C., *Constitutional Law*, p. 375. Professor Plehn defines taxes as “general compulsory contributions of wealth levied upon persons, natural or corporate, to defray the expenses incurred in conferring a common benefit upon the residents of the State.”

levied in accordance with the theory of faculty or ability; that is, individuals are required to share the burden of taxation according to their ability, estimated upon the basis of property or income.

241. General Principles of Taxation. Certain general principles govern the levying of taxes, the following being especially important: —

(1) The rule of *equality*, which prescribes that as far as possible all individuals shall pay taxes according to their respective abilities. **Equality**

(2) The rule of *uniformity*, which means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. "Different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times." ¹ **Uniformity**

(3) The tax must be for a *public purpose*, that is, for the support of government and its legitimate objects, and not for the private advantage of individuals. ² **Public purpose**

(4) The tax must be *authorized* by the legislature, it being a cardinal principle of republican government that taxes can be voted only by the representatives of the people, that is, by the legislative power. **Legislative authorization**

(5) *Jurisdiction* is essential to the validity of the tax; that is, the person or thing taxed must be amenable to the authority of the government making the levy. **Jurisdiction**

(6) *Certainty* should characterize every tax; that is, the time, manner, and amount of the payment should not be arbitrary, but fixed and known to all. **Certainty**

(7) *Convenience* is another desirable characteristic; the tax should be collected at a time when it will be most convenient for the contributors to pay; and in general should cause as little inconvenience as possible. **Convenience**

(8) *Economy* should characterize all tax levies; the tax should not be too difficult of administration, nor the cost of collection excessive. **Economy**

242. Extent of the Taxing Power. The largest discretion is allowed the legislative power in determining the basis on which taxes shall be laid; and all property, tangible or intangible, is subject to taxation. "Taxes may be levied on **What may be taxed**

¹ Black, H. C., *Constitutional Law*, p. 392.

² "If the end be not public, it matters not that the individuals for whose benefit the tax is laid are numerous, nor that the object is to afford relief from the consequences of a pestilence, fire, inundation, or other general and widespread calamity." — Hare, J. I. C., *American Constitutional Law*, 1, 279.

real property or personal property, on occupations, on incomes, on inheritances, and on various other rights, benefits, and privileges which are enjoyed under the protection and sanction of organized society.”¹

The power of the several commonwealths to tax is a general power, subject only to certain express and implied limitations in the national and State constitutions, and to the limitations imposed by the nature of our form of government. Six important limitations are imposed by the federal constitution, or by the nature of the federal government; and additional limitations are found in many State constitutions.

By express provisions of the federal constitution, the commonwealths are forbidden, without the consent of Congress (1) to lay any imposts or duties on imports or exports except those absolutely necessary for the execution of State inspection laws,² or (2) to lay any tonnage duty.³ Moreover, (3) an implied restriction on the power of the commonwealths to tax foreign or interstate commerce is found in the provision giving Congress power to regulate foreign and interstate commerce.⁴

(4) Another implied limitation arises from the guaranty of the federal constitution that “the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States.”⁵ This provision prevents a State from discriminating against citizens of other commonwealths by levying upon the property or business of non-residents a higher tax than is levied upon corresponding property or business of its own citizens.⁶

(5) State governments may not tax the agents or instrumentalities by which the federal government performs its functions, because if allowed this power they might cripple or even wholly defeat the national authority. Hence a State government may not impose a tax upon the operations of a bank chartered by Congress;⁷ nor upon the salary of a federal officer; nor upon the evidences of indebtedness issued by the national government.⁸

¹ McClain, E., *Constitutional Law*, p. 127.

² *Constitution*, Art. I, Sec. 10, Par. 3.

³ *Constitution*, Art. I, Sec. 10, Par. 2.

⁴ *Constitution*, Art. I, Sec. 8, Par. 3.

⁵ *Constitution*, Art. IV, Sec. 2, Par. 1.

⁶ *Ward v. Maryland*, 12 Wall. 419; *Welton v. Missouri*, 91 U. S. 275; *Walling v. Michigan*, 116 U. S. 446; *Luy v. Baltimore*, 100 U. S. 434.

⁷ *M'Culloch v. Maryland*, 4 Wheaton, 316; *Thayer's Cases*, II, 1340; *Osborn v. U. S. Bank*, 9 Wheaton, 738.

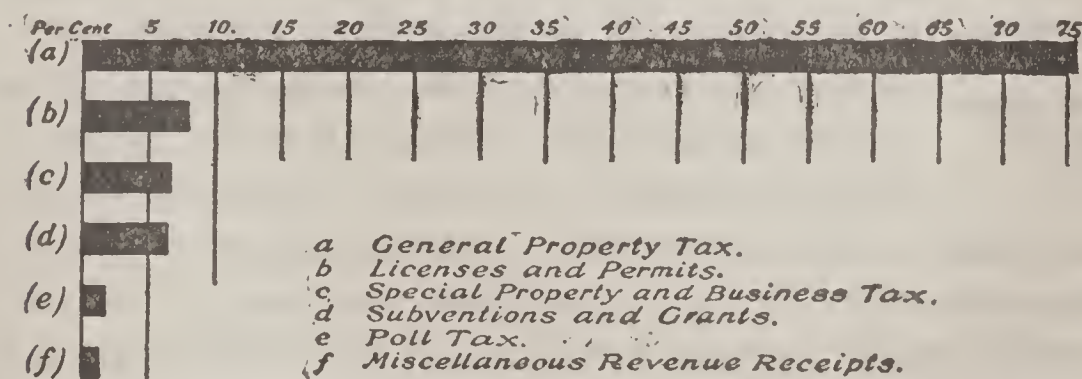
⁸ This implied limitation is reciprocal: for similar reasons the federal government cannot lay a tax upon the agents or instrumentalities of the State governments.

(6) If, as sometimes happens, the State and federal governments tax the same thing, the federal tax must first be satisfied. This limitation arises from the subordinate position of the commonwealths in the federal plan. **Subordinate position of States**

(7) Many State constitutions limit the amount which may be raised by taxation to a certain per cent of the valuation of taxable property; and also provide that no greater revenue shall be raised than the current needs of government require. **Amount of taxation**

(8) The constitutions of many commonwealths exempt certain property from taxation, including that of educational institutions, public hospitals, charitable institutions, church property used for religious purposes, public property used for public purposes, and personal property to a limited amount (generally about two hundred dollars for each individual). **Exemptions**

243. Classification of Taxes. Taxes may be classified in various ways, the most common division being into direct and indirect taxes. Direct taxes are those levied immediately upon the persons who are to bear the burden. The law contemplates that the taxpayer shall also be the tax-bearer, and the burden of taxation cannot ordinarily be shifted. The most important direct taxes are the general property tax, mortgage tax, inheritance tax, corporation, poll, and income taxes. **Direct taxes**



SOURCES OF REVENUES OF STATE AND LOCAL GOVERNMENTS.

Indirect taxes are those levied upon commodities before they reach the consumer. The taxpayer is not the real tax-bearer, since the tax is ultimately paid by the consumer in the form of a higher price. The **Indirect taxes**

principal indirect taxes are customs duties, excise or internal revenue taxes, franchise and license taxes.

The federal government derives its revenue almost exclusively from indirect taxes (customs duties and excises). State and local revenues are derived chiefly from direct taxes — the general property tax, inheritance, and corporation taxes; together with a relatively small amount from such indirect taxes as franchises and licenses.

Federal
and State
revenue

244. Assessment of General Property Tax. Throughout the Union, about seventy-five per cent of State and local revenues is derived from the general property tax, which in theory is levied on the entire amount of property, real and personal, owned by taxpayers. The first step in administering the general property tax is that of assessment, or placing a valuation upon taxable property. Local assessors are generally elected by the city, township, or county; and these officers inspect and place a value upon the property of each taxpayer. To aid in this work, taxpayers are ordinarily required to make a declaration under oath of the amount of their personal property, these declarations being subject to correction by the assessors.

Process of
assessment

Real estate ¹ and visible personal property (as furniture, stock in trade, live stock, or other farm capital) can be readily discovered by the assessors; but it has proved exceedingly difficult to reach intangible personal property, as notes, bonds, stocks, and mortgages. Hence the most valuable portion of personal property owned by the wealthiest members of the community largely escapes taxation. In the United States as a whole, probably only one fifth of all personal property is reached under the general property tax. Both real and personal property are assessed far below their true values, real estate being generally rated at from one third to three fourths of its actual value.

Difficulties
in assess-
ment

¹ Real estate includes both land and the permanent structures resting upon it.

245. Equalization. The work of local assessors is commonly subject to correction by a county board of equalization, since otherwise property in one section of the county may be assessed at a lower valuation than property in other sections, thus placing an unequal burden upon taxpayers. Furthermore, there is generally a State board of equalization charged with the duty of reviewing and equalizing the valuations within the various counties; for if the property in one county is undervalued as compared with the average rate of valuation throughout the commonwealth, the county escapes to that extent from its just burden of State taxation.

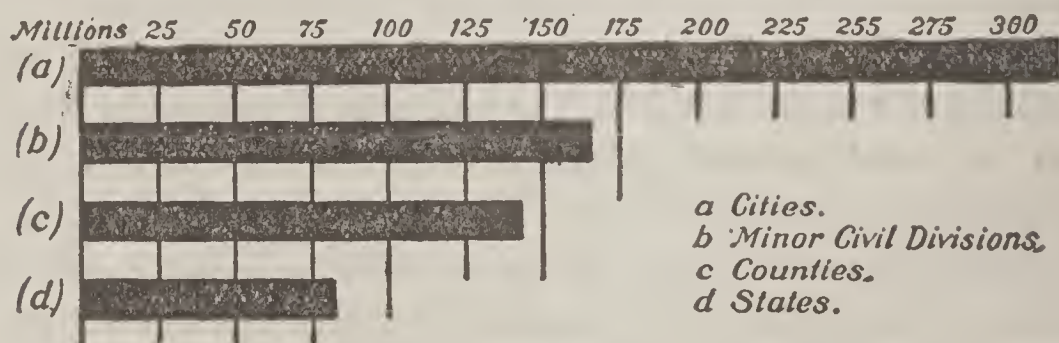
246. Levy and Collection of Taxes. After the process of assessment has been finished, the next step is the levy of the tax, or the fixing of the rate. The amount of revenue to be raised is first determined by the Boards of equalization Fixing the tax rate proper authority of each taxing area — generally by the board of education for the school district, by the township trustees for the township, by the town-meeting for the town, by the council for the municipality, by the county commissioners for the county, and by the legislature for the State. The rate of taxation is then determined by calculating the ratio between the estimate of necessary funds and the total assessed valuation of taxable property within the district concerned. For example, if the total State expenditures are estimated at three million dollars, and the assessed valuation of all taxable property in the commonwealth is three billion dollars, the rate for State purposes will be the former sum divided by the latter, or one tenth of one per cent, or one mill on the dollar. In the same manner the rates for the county, town or township, city, village, or school district are separately determined by finding the ratio of the assessed value of taxable property within the district to the revenue required by the district.

The State auditor certifies the State tax rate to the county auditors or clerks; and the latter add to this the

rates authorized for local purposes. The sum of these rates will be the percentage of each taxpayer's property required for the support of State and local government. For example, the rates for taxpayers in rural and urban communities may be as follows: —

RURAL TAXPAYER ¹		URBAN TAXPAYER	
Rate	Mills	Rate	Mills
School.....	4	School.....	9.7
Township.....	1.25	Municipal.....	16.95
County.....	4.605	County.....	4.605
State.....	1.345	State.....	1.345
Total.....	11.2	Total.....	32.6

All taxes are collected by local officers, generally by the township or county treasurer, the township supervisor, the selectman, constable, or special tax collectors. The total amount of State and local taxes collected by these officers is then distributed, the respective shares being turned over to the township (or city) treasurer, the county and the State treasurers.



DISTRIBUTION OF GENERAL PROPERTY TAX AMONG STATE AND LOCAL GOVERNMENTS

If a taxpayer fails to pay his tax bill at a specified date, the property upon which the tax is levied is delinquent. A penalty in the form of an increased rate is then imposed, and if the bill remains unpaid the property may be sold to satisfy the claim. If sold, the ex-

¹ Thus on property assessed at \$1000, the taxpayer in the rural community would pay \$11.20, while on the same amount of property the urban taxpayer would pay \$32.60.

cess over the amount of taxes due is given to the owner; and ordinarily he has the right within a limited period (generally two years) to repurchase the property at the sale price plus certain penalties.

247. Defects of the General Property Tax. The defects of the general property tax are so serious that this form of tax has been severely condemned by all students of finance, and by most administrative officials. Professor Seligman declares that "the general property tax as actually administered to-day is beyond all peradventure the worst tax known in the civilized world."

Its chief defects may be summarized as follows: —

(1) Theoretically, the general property tax is bad, since it takes property itself as a criterion of taxpaying ability; whereas not property, but the income which property yields, is the best index of taxpaying power. **Wrong in theory**

(2) The general property tax is defective in practice, since it fails to reach the most valuable portion of personal property — intangible property. Hence it imposes an undue burden upon real estate, and upon those engaged in agriculture, as compared with those in other pursuits. **Unjust in practice**

(3) The most serious defect in the general property tax arises from the difficulty of assessment. The greatest inequalities prevail in the valuation of property in the different townships within the county, and in the counties composing the State. Hence one township may bear an undue burden of county taxation as compared with other townships, and counties often bear unequal burdens of State taxation.¹ **Unequal valuations**

(4) Finally, the general property tax causes public demoralization. Since taxpayers are commonly required to declare their taxable property under oath, those who are conscientious are taxed heavily, while others escape a large share of their just burden. **Public demoralization**

248. Mortgage Taxes. In several commonwealths a tax is levied upon capital invested in mortgages. For example, in New York a small tax is levied upon mortgages at the

¹ "The assessors are commonly local officers dependent for their places upon the suffrage of those whose property they assess, and since these assessments are taken as the basis of county and State taxes, as well as of township taxes, a strong temptation is presented to each assessor to value the property in his township as low as possible in order that it may not be charged with an unduly large proportion of county and State taxes." — Adams, H. C., *The Science of Finance*, p. 445.

time of record, after which they are exempt from further taxation. The policy prevailing in some States of taxing mortgages annually at the local tax rate is both unjust and difficult of enforcement. Such a tax involves double taxation unless the mortgagor is taxed only on the value of his property less the amount of the mortgage.¹

249. Inheritance Taxes. Inheritance taxes² are those imposed upon property inherited from the estate of a deceased person. This form of taxation is extensively used in Great Britain, Switzerland, and Australia; and it also prevails in three fourths of the commonwealths of the Union. In levying inheritance taxes, the practice is to exempt small estates entirely, and frequently to exempt that portion of the estate which passes to direct heirs.

250. Corporation Tax. The failure of the general property tax to reach intangible personal property, such as stocks and bonds in the hands of individual owners, has been partially remedied in some commonwealths by a tax levied upon corporations, which from their nature must maintain an official record of property and earnings.

The corporation tax is sometimes a general one imposed upon all corporations doing business within the State. More often it is levied upon those industries which are monopolistic in character, and hence superior to the normal control of commercial forces; or which for some other reason bear a public or quasi-public character. Illustrations of these are (1) the railway, telegraph, telephone, and express industries; (2) bridge companies and corporations owning rolling stock and terminals; (3) banks, building and loan associations, and insurance companies; and (4) municipal monopolies, as street railways, gas and electric-lighting companies.

The basis of the corporation tax is in many instances the capital stock at its par or market value; and often the bonded indebtedness is also included. In other States, the volume of business transacted, the gross earnings, the divi-

¹ Since the economic result of a mortgage tax is to increase the interest rate; or, in other words, the burden of the tax is imposed upon borrowers.

² Known also as succession taxes, and death duties.

dends and interest, or the net earnings, are taken as the basis. In some commonwealths, as in New York, a tax is levied upon the organization of corporations as well as upon their annual earnings.¹

251. Poll or Capitation Tax. The poll or capitation tax is a uniform contribution levied against individuals as such. This generally proves a very difficult tax to collect; and it is an unjust form of tax, since the same amount is exacted from each person, irrespective of his ability to pay. Many commonwealths still retain the poll tax, the levy being two or three dollars upon all males over twenty-one years of age.

252. Income Taxes. The income tax is a tax of a certain per cent on the annual clear income of each individual. Incomes below a certain amount are commonly exempt, and the rate of taxation is often progressive.² An income tax in some form is levied by Virginia, Oklahoma, Pennsylvania, Tennessee, North Carolina, Massachusetts, and South Carolina.

253. License Taxes. License taxes include "all payments which the law makes a condition to the transaction of business, or to the following of a profession, a trade, or any industrial calling."³ Except in the Southern States, where licenses are required for many different kinds of business, the license tax is generally imposed upon occupations which present peculiar difficulties from the point of view of police regulation, as the business of saloon keepers, hack drivers, draymen, and peddlers.

254. Franchise Taxes. A franchise is an exclusive right or privilege granted by government, as the right to supply gas, water, or electric light within a certain area, or the right to use the streets of a city for the operation of a street-railway system. The chief value

¹ The States of New York, Massachusetts, Pennsylvania, Vermont, and New Jersey derive the greater part of their revenues from corporation taxes; and the present tendency is to develop the corporation tax for State purposes, leaving the general property tax to the various local areas (counties, townships, and cities).

² A tax rate is progressive when a larger per cent is assessed upon higher than upon lower values; it is proportioned when the rate is the same per cent on all property.

³ Adams, H. C., *Science of Finance*, p. 378.

of street-railway property is not the cost of rolling stock and rails, but rather the exclusive right to use the streets for the purpose of carrying passengers. The franchise tax, then, is a tax upon a value arising from an exclusive privilege — in other words, upon a value which society itself creates. Throughout the entire history of American municipalities, franchises have been given away with utter disregard of their value and the public interest; but the present tendency is to secure for the city some return for the values arising from municipal growth and development.

255. Reforms in Taxation. The reform in taxation most earnestly advocated by students of this subject consists in the assignment of definite and exclusive sources of income to each of the several grades of government. Thus to the federal government would be assigned the revenue from customs duties and excise taxes, supplemented in case of need by a federal income tax.

State revenue should be derived from taxation of corporations, inheritance taxes, and licenses. The effort to reach intangible personal property through the general property tax should be entirely abandoned, and the commonwealth should leave to local governments all taxation of real estate. In this way many of the defects of the general property tax would be remedied. The antiquated and unjust poll tax should be abandoned entirely.

The revenue for rural local governments should be derived chiefly from the tax upon real estate, supplemented, if necessary, by a tax upon visible personal property. In cities large revenues should be derived from franchises and licenses, supplemented in case of need by a small tax upon real estate.

256. Borrowing Power of State Governments. In addition to the income obtained from the foregoing sources, States may obtain revenue through the use of their credit, or in other words, may borrow money.

Such revenue is called anticipatory, and "its legitimate use is confined to making headway against a fiscal exigency, or to the providing of capital for public investment."¹ State and local debts are generally incurred for the construction of public works, although sometimes they are due to deficiencies in taxation. Debt-making means the distribution of the burden of heavy expenditures over a later period, the cost of this postponement being the payment of the annual interest.

Because of the recklessness of legislative bodies in contracting debts, most constitutions limit the amount of indebtedness that may be incurred by State and local governments to a certain per cent of the valuation of taxable property. Limitations are often imposed as to the objects for which State governments may borrow money; and a number of constitutions provide that no money may be borrowed unless the law authorizing the loan be ratified by a popular vote.²

Constitu-
tional lim-
itations

State governments generally borrow money through the issue of bonds, since the federal constitution expressly prohibits the commonwealths from issuing due-bills, or paper notes of any kind intended to circulate as money.³ Provision is commonly made for the redemption of bonds through the accumulation of a sinking-fund; that is, a portion of the annual income is set aside each year in a special fund which is invested in interest-bearing securities, and ultimately applied to the extinguishment of the debt.

Method of
borrowing

257. History of State Debts. Shortly after the adoption of the national constitution (1789), the federal government assumed the Revolutionary debt of the States amounting to about \$21,000,000; and for thirty years afterwards there was little State debt. Then came the era of ex-

Early in-
debtedness

¹ Adams, H. C., *Science of Finance*, p. 22.

² Commenting upon these restrictions, Bryce declares that "one feels, in reading these multiform provisions, as if the legislature was a rabbit seeking to issue from its burrow to ravage the crops wherever it could, and the people of the State were obliged to close every exit, because they could not otherwise restrain its inveterate propensity to mischief." — *The American Commonwealth*, 1, 522.

³ *Constitution*, Art. 1, Sec. 10, Par. 1; *Craig v. Missouri*, 4 Peters, p. 410.

tensive canal building, followed by railroad building with State aid, which resulted in a rapid increase of State indebtedness.¹ After the panic of 1837 a number of commonwealths repudiated a part of their debts, to the amount of about \$14,000,000.

The Civil War created a large indebtedness on the part of the commonwealths, as well as the federal government; but the loans incurred in aid of rebellion by the eleven seceding States became void through the adoption of the fourteenth amendment. After the war the Southern States, and also two Northern commonwealths, repudiated indebtedness amounting in all to \$160,000,000.²

State debts are now decreasing, and a number of commonwealths are practically free from debt. One reason for this decline is the increase of municipal and local indebtedness, owing to the increased activities which local governments are called upon to perform. The total municipal debt throughout the Union is now about six times the aggregate State indebtedness, and considerably larger than the national debt.

GENERAL REFERENCES

- Adams, H. C., *The Science of Finance* (1905).
 Agger, E. E., *The Budget in the American Commonwealths*, Columbia University Studies (1907).
 Ashley, R. L., *American Federal State* (1903), ch. xxv.
 Bastable, C. F., *Public Finance* (1895).
 Beard, C. A., *American Government and Politics* (1910), ch. xxxi.
 ——— *Readings in American Government and Politics* (1910), ch. xxxi.
 Blackmar, F. W., *Economics for High Schools* (1907), ch. xxxii.
 Bryce, James, *The American Commonwealth* (1908), I, ch. xliii.
 Bullock, C. J., *Introduction to the Study of Economics* (1900), ch. xvii.
 Cooley, T. M., *Constitutional Limitations* (1903), ch. xiv.
 Daniels, W. M., *Elements of Public Finance* (1899).
 Ely, R. T., and Wicker, G. R., *Elementary Principles of Economics* (1904), pp. 327-363.
 Ely, R. T., and Finley, John H., *Taxation in American States and Cities*.
 Fairlie, J. A., *Municipal Administration* (1901), chs. xiii-xvi.
 Hart, A. B., *Actual Government* (1903), chs. xxi-xxii.
 Hollander, J. H., *Studies in State Taxation* (Johns Hopkins University Studies), xviii, nos. 1-4 (1900).
 Lalor, J. J., *Cyclopedia of Political Science*, etc. (1882-84); articles on Budgets, Debts, Finance, Revenue, Municipal Bonds, Repudiation, Taxation.

¹ It is estimated that the total debt of the States in 1838 was \$170,800,000, of which \$60,200,000 had been incurred for canals, \$42,800,000 for railroads, and \$52,600,000 for banking.

² Most of this amount was contracted just after the war by the carpet-bag governments of the South.

National Municipal League, *Proceedings of the Providence Conference for Good City Government* (1907), pp. 223-316.

Plehn, Carl C., *Introduction to Public Finance* (1897).

Seligman, E. R. A., *Essays in Taxation* (1895).

QUESTIONS AND EXERCISES

1. What restrictions are imposed by your State constitution upon (a) the power to levy taxes; (b) the power to borrow money?
2. Study the balance sheet or financial statement of your State government for last year, and report upon the following: (a) the amount and sources of revenue for the year, arranged in the order of their importance; (b) the chief items of expenditure.
3. Make a similar report concerning the financial statement of your city or county.
4. State which of the following kinds of taxes are levied in your State: general property tax, mortgage tax, inheritance tax, corporation tax, poll or capitation tax, income tax, license or business tax, franchise tax.
5. What is the total assessed valuation of property in your city or county? What is the tax rate for city, school, county, and State purposes? Taking the assessed valuation as a basis, figure the amount of revenue which each area would receive at the respective rates.
6. Study the method of assessing property and of levying the general property tax in your community. Compare with the process described in Sections 244-246.
7. Are there county and State boards of equalization in your commonwealth? If so, how are they chosen? How may an assessment be increased or decreased?
8. What portion of one's real or personal property is exempt from taxation in your State? What is the reason for the exemption?
9. Does personal property bear its share of taxation in your community, or does the greater part of it escape taxation? Can you suggest a remedy?
10. Prepare a graphical chart showing fluctuations in the tax rates in your city or county during the last twenty years.
11. Do rents tend to rise and fall as the tax rate increases or decreases? Why?
12. What penalty is imposed in case of delinquent taxes?
13. By whom are taxes assessed in your city or county? To whom paid?
14. If corporation taxes are levied in your State, give the rate of the tax, and the basis upon which it is levied (capitalization, earnings, etc.).
15. If inheritance taxes are levied, state the rate, exemptions, etc. Same for income taxes.
16. Why are poll or capitation taxes objectionable?
17. Are franchises taxed in your city? What is the justification of this form of tax?
18. Does the right to vote in your State depend upon the payment of any kind of taxes? Are all taxpayers voters?
19. Compare the system of taxation suggested in Section 255 with that actually in force in your State.
20. What is the amount of your State debt? Of your county debt? Of

- your city debt? Of your school-district debt? How are these debts to be paid?
21. For what amount are bonds generally issued by your local government? What is the usual rate of interest? How are the bonds sold?
 22. For what purposes are governments justified in issuing bonds? Is it proper to issue bonds to defray current expenses?
 23. If possible, bring a government bond to class for examination and study.

CHAPTER XVIII

ORIGIN OF THE FEDERAL GOVERNMENT

258. Beginning of the Federal Union. From the standpoint of constitutional law, the Federal Union as it exists to-day dates from 1789, when our national constitution went into effect. Historically its origin is much earlier, dating back to the crude attempts at union during colonial days (1643-1775). Next came the period of Revolutionary union (1775-1781), followed by constitutional union, first under the Articles of Confederation (1781-1789), then under the federal constitution.

Three
periods
of union

259. Conditions affecting Colonial Union. Tendencies toward union existed in the American colonies almost from the beginning of their history. Nearly four fifths of the colonists were of English descent, speaking the same language, and except the Roman Catholics in Maryland, professing the Protestant religion. Not only were the colonists united by the ties of a common history, language, and religion, but all were governed by the English system of common law, modified to meet colonial conditions; and they claimed as their birthright the privileges which the common law recognized as belonging to all Englishmen. Another influence tending toward union was the fact that the colonists were threatened by a common enemy — first the Indians, then the Dutch and French, and finally the mother country itself.

Tendencies
favoring
union

On the other hand, several conditions operated to prevent an early and permanent union. From its establishment each colony had been politically separate from every other, and the strong feeling of local independence checked for many years the inclination toward union. The geographical situation of the colonies also tended to keep them separate. Communication either by land or water was both difficult and dangerous, and the lack of intercourse with their neighbors fostered a spirit of provincial narrowness and exclusion. Industrially also, the interests of the colonies were distinct. In New England, shipbuilding was the leading industry; while at the South,

Unfavorable
conditions

agriculture carried on by slave labor was the chief source of wealth.

260. The New England Confederation. In 1643 the condition of affairs in England ¹ was such that the mother country could do little to protect the colonies from the danger of attack by the Indians and the Dutch. Accordingly, four of the New England colonies (Massachusetts Bay, Plymouth, Connecticut, and New Haven) united in a league for the purpose of mutual defense, as well as for the extradition of criminals and fugitive servants. The affairs entrusted to the confederate government were managed by an advisory board, on which each colony was represented by two commissioners. This league continued in existence for forty years and rendered effective service, especially in the wars against the Indians. More important still, it accustomed the colonies to united action and showed them the benefits of union.

**Members
and powers**

261. The Albany Plan of Union (1754). During the long struggle with the French, several plans were brought forward for a closer union of the colonies. In 1754 delegates from seven colonies met at Albany in answer to a summons from the Lords of Trade. The Congress finally adopted the plan presented by Benjamin Franklin for a colonial union to be established by Act of Parliament. Although unanimously adopted by the Congress, the proposed plan was rejected both in England and in America. The colonies distrusted it as giving too much power to the crown, while the British government considered it too democratic.

**Franklin's
plan of union**

262. Stamp Act Congress (1765). The dormant spirit of union in the colonies was finally aroused by the adoption of a new British colonial policy. The Stamp Act passed by the British Parliament in 1764 met with bitter opposition from the colonists, who claimed that such a tax could not be constitutionally imposed except by their own legislatures. At the suggestion of the Massachusetts House of Representatives, nine colonies sent delegates to the Stamp Act Congress (1765). This Congress drew up an address to the king, and adopted a declaration of rights setting forth that "the people of these colonies are not, and from their local circumstances cannot be, represented in the House of Commons"; and that no taxes "can be reasonably imposed on them but by their respective legislatures." The Stamp Act Congress of 1765 marks one of the

**Declaration
of rights**

¹ The period from 1642 to 1649 marked the struggle between Charles I and the Long Parliament, ending in the execution of the king and the proclamation of the Commonwealth.

most important steps in the development of the spirit of union — so important that it has been called the day-star of the American Union.

263. Growth of Spirit of Resistance. The obnoxious Stamp Act was repealed in March, 1766, but the British government did not abandon its position on the subject of taxation. Coupled with the repeal of the Stamp Act, Parliament had passed a resolution affirming its right to legislate for the colonies "in all cases whatsoever."¹ Within the next few years other revenue acts were passed, including the unpopular tax on tea; and in 1773, following a suggestion made several years before by the Massachusetts legislature, committees of correspondence were formed in the various colonies to secure coöperation in resisting the aggressions of Great Britain. These committees were appointed by the colonial assemblies, and mark another important step toward a political union of the colonies.

264. First Continental Congress (1774). The first Continental Congress owed its origin to the series of repressive measures adopted by Parliament in order to discipline Massachusetts. A general congress to secure redress of grievances had been proposed by Virginia in May, 1774, but the definite call came from Massachusetts in June of the same year. All the colonies except Georgia were represented.

In September, 1774, the fifty-five delegates assembled at Philadelphia. They drew up a declaration of rights and grievances, together with a petition to the king requesting the repeal of the obnoxious laws; and recommended that until redress of grievances was secured, the colonists should neither buy from nor sell to the people of Great Britain. This non- importation agreement or "Association" was subscribed to by each member for himself and the colony he represented, and virtually marks the beginning of the Federal Union. Congress adjourned after recommending that a similar body be convened at Philadelphia in May of the following year, in case the colonial grievances were not redressed in the meantime.

265. The Second Continental Congress (1775-1781). The Second Continental Congress, most of whose delegates were chosen by popular conventions, assembled in the state house at Philadelphia on May 10, 1775. By this time the battle of Lexington had been fought, and an army

¹ This act Pitt called a resolution "for England's right to do what the Treasury pleased with three millions of freemen."

of patriots was laying siege to Boston. Congress at once assumed revolutionary powers, which were exercised with the acquiescence of the people during the next six years. It organized an army and chose Washington commander-in-chief; raised a navy; licensed privateers; issued the Continental Currency, pledging the faith of the country to its redemption; established a treasury department and post office; sent representatives to France and other countries; adopted the Declaration of Independence; gave advice concerning the formation of State governments; concluded the treaty of alliance with France; and proposed to the States the Articles of Confederation, the adoption of which in 1781 legalized the Revolutionary Union. In short, the Second Continental Congress assumed and exercised all the sovereign powers necessary to the successful maintenance of the Revolutionary cause, and this *de facto* government was acquiesced in by the people.

266. Formation of the Confederation. On the same day that Congress appointed a committee to draw up the Declaration of Independence (June 11, 1776), a second committee consisting of one member from each State was chosen to draw up a plan of Confederation. On July 12, 1776, this committee reported a plan of union supposed to have been drafted by John Dickinson; and after some delay it was adopted by Congress (November 15, 1777), and sent to the States for ratification. By July, 1778, ten States had agreed to the Articles of Confederation (which were only to be binding when all the States had ratified). By May, 1779, all had ratified except Maryland; and this commonwealth steadfastly refused to give her sanction unless her more powerful neighbors — especially New York and Virginia — should cede to the general government their claims to the western lands. New York finally relinquished her claims to the western domain, and Virginia promised similar action; whereupon Maryland gave her ratification, and on March 1, 1781, the Articles went into effect.

267. Character of the Confederation Government. The new government was a confederation or league of States, rather than a federal government such as we have to-day. The States relinquished some of their sovereign powers, no commonwealth being permitted to send ambassadors, make treaties, maintain an army, or levy war. On the other hand, the Articles expressly declared that "each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this federation delegated to the United States in Congress assembled." Each commonwealth whether large or small had but one vote in Con-

**Ratification
of Articles**

**A league
of States**

gress; and the Articles could only be amended by the unanimous consent of the State legislatures — a provision which made amendment practically impossible.

A striking feature of the new government was that it did not follow Montesquieu's theory of the division of governmental powers among executive, legislative, and judicial departments. There was no national executive or judiciary, **The Congress** and legislative powers were vested in a Congress of a single house. To this Congress each State sent not less than two nor more than seven delegates, chosen by its legislature for a term of one year, but subject to recall at any time. Delegates were paid by the State governments. Each commonwealth had one vote, which was determined by a majority of the delegates present when a vote was taken.

The legislative powers of Congress included the sole and exclusive power to determine peace and war; to send and receive ambassadors; to form treaties and alliances; to establish rules concerning captures on land and water; to **Powers of Congress** grant letters of marque and reprisal in time of peace; to appoint courts for the trials of piracies and felonies committed on the high seas; to establish courts of final appeal in cases of captures; to decide on appeal any dispute between two or more States concerning boundary, jurisdiction, or other causes; to make requisitions upon each State for its quota of troops or taxes; to borrow money and emit bills on the credit of the United States; to regulate the alloy and value of coins issued by Congress or the States; to fix the standard of weights and measures; to regulate relations with the Indians; to establish post offices; to appoint and commission the higher officers of the army, and all naval officers; and to make rules for the government of the land and naval forces. The Articles also provided for interstate rights of citizenship, for the extradition of criminals, and for according full faith and credit in each commonwealth to the judicial acts and proceedings of all other commonwealths. For the exercise of the most important of these powers the consent of nine States was necessary; and all questions (with the exception of adjourning from day to day) required the assent of a majority of the States.

268. Defects of the Confederation. The government established by the Articles of Confederation was fatally defective both in organization and in powers. The concentration of all governmental authority in a legislature consisting **Defects in structure** of a single house, the absolute equality in Congress of all States large or small, the short term of the delegates, coupled with the provision for their payment by the States and the right

of recall, and finally the provision requiring the assent of nine commonwealths for all important legislation, and the consent of all for any amendment of the Articles, — these constituted most serious defects in the structure of government, defects which could only be remedied by a new constitution.

But the most fatal weakness of the Confederation government was that the nominally large powers of Congress could not be brought to bear directly upon the individual citizen. **Lack of necessary powers** The general government could reach the individual only through the action of the State governments; and it had no power to coerce a State. Congress might declare war, and make requisitions upon the States for their quotas of troops; but it could not enlist a single soldier. Congress might incur indebtedness, and ask the States for the sums necessary for the support of government; but it could not raise a dollar by taxation. Congress could make treaties, but it could not compel their observance by the States. In short, as one writer has said, Congress could declare everything but do nothing.

269. Failure of the Confederation Government. Even under the stress of war and the pressure of common dangers, the Confederation government was feeble and inefficient; **Inadequate revenue** and with the return of peace it soon lapsed into a state of impotence. One historian asserts that "the period of five years following the peace of 1783 was the most critical moment in all the history of the American people."¹ Foremost among the causes which led to the breakdown of the Confederation was its lack of power to raise money with which to pay the national debt (amounting to about \$42,000,000), or even to secure the funds necessary for the ordinary expenses of government. Revenue could be secured only through requisitions upon the States; but in the years 1782–83, requisitions amounting to \$10,000,000 yielded less than \$1,500,000. As a result Congress could not pay the large foreign debt nor even the soldiers of the Continental Army, save in certificates of indebtedness. In 1783 Congress found itself forced to leave Philadelphia and take refuge at Princeton, on account of the riotous conduct of some eighty Pennsylvania soldiers of the line, who had become mutinous at their failure to receive pay.

Another serious weakness of the Confederation arose from its **Commerce and foreign relations** lack of power to regulate commerce, either foreign or domestic. Each State taxed imports as it chose, with the result that foreign and domestic commerce was in a state of chaos. Moreover, while Congress nominally had power

¹ Fiske, John, *The Critical Period of American History*, p. 55.

to conclude treaties, foreign countries declined to negotiate with a government powerless to compel their observance. Thus "our diplomacy failed because our weakness had been proclaimed to the world. We were bullied by England, insulted by France and Spain, and looked askance at in Holland."¹

Within the commonwealths, industrial and commercial distress everywhere abounded, and in some sections social disorders threatened the annihilation of all government. Nearly all the States were issuing worthless paper money; several **Internal disorder** had passed laws impairing the obligation of contracts; and finally, in Massachusetts a large portion of the debtor class took up arms to prevent the holding of courts and the collection of debts (Shays' Rebellion, 1786-87). Everywhere State was arrayed against State, section against section; New England against the South over the question of trade with Great Britain, the East against the West on the subject of commerce with Spain and the navigation of the Mississippi.

Attempts were made in 1781 and again in 1783 to amend the Articles so as to confer upon Congress power to levy duties upon imported goods; but each time the amendment was **Attempts to amend Articles** defeated by the selfish opposition of a single State — Rhode Island refusing to consent to the first proposal, and New York to the second. In 1784 Congress proposed a third amendment giving it power to pass commercial laws discriminating against foreign countries which refused to make commercial treaties with the United States — a measure aimed particularly at Great Britain; but to this plan several States refused assent.

By 1785 it was apparent that the Confederation was on the verge of collapse. Congress had declined both in numbers and character. The ablest men would no longer consent to **Collapse of the Confederation** serve as delegates, and it was almost impossible to secure a quorum for the transaction of business. "There is in America no general government," reported the agent of France in 1784; and the statement was almost literally true. Congress was powerless to compel Great Britain to carry out the provisions of the peace treaty, or to secure their observance on the part of the States. The Confederation government could command neither respect abroad nor obedience at home; and by 1786 its break-down was so complete that it was plain that the union must be strengthened, or give way to a condition of anarchy and civil war.

¹ Fiske, John, *The Critical Period of American History*, p. 155.

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), ch. iv.
 Beard, C. A., *American Government and Politics* (1910), ch. ii.
 ——— *Readings in American Government and Politics* (1910), ch. ii.
 Channing, Edward, *Students' History of the United States* (1905), chs. iv-vi.
 Curtis, George T., *Constitutional History of the United States*.
 Fiske, John, *The Critical Period of American History* (1888).
 Frothingham, Richard, *The Rise of the Republic of the United States* (1872).
 Hart, A. B., *American History told by Contemporaries* (1906), II, chs. XXIII-XXV, XXXIII; III, chs. VI-IX.
 ——— *Formation of the Union* (1893), chs. III-V.
 Howard, G. E., *Preliminaries of the Revolution* (1905), chs. VII-XI, XIV-XVII.
 McLaughlin, A. C., *The Confederation and the Constitution* (1905), chs. III-XI.
 Schouler, James, *Constitutional Studies* (1904), pp. 70-98.
 ——— *History of the United States* (rev. ed. 1894), I, ch. i.
 Sparks, Edwin E., *The United States of America* (1904), I, chs. i, iv.
 Story, Joseph, *Commentaries* (5th ed., 1905), secs. 198-271.
 Thorpe, F. N., *The Constitutional History of the United States* (1901), chs. I-VIII.
 Van Tyne, C. H., *The American Revolution* (1905), ch. xi.

QUESTIONS AND EXERCISES

1. Prepare a report upon the formation and history of the New England Confederation.
2. Discuss fully the proposed union of 1754. (Frothingham, Richard, *Rise of the Republic of the United States*; MacDonald, William, *Select Documents*, I, 253-257.)
3. Prepare a report upon the work of the committees of correspondence.
4. Which body exercised greater authority, the Second Continental Congress or the Congress under the Articles of Confederation?
5. Why is the government under the Continental Congress called a *de facto* government?
6. What were the causes of armed resistance to Great Britain as set forth in the Declaration adopted by the Second Continental Congress? (MacDonald, William, *Select Documents*, I, 374-381.)
7. What great territorial ordinance was adopted by Congress under the Articles of Confederation?
8. Describe the commercial discriminations of the States under the Articles of Confederation. (Fiske, John, *Critical Period of American History*, pp. 142-147.)

CHAPTER XIX

THE FORMATION OF THE CONSTITUTION

270. The Alexandria Conference (1785). Many events, including Shays' Rebellion and the failure of the proposed impost amendment, combined to bring about the Constitutional Convention of 1787; but the immediate cause was the effort of certain States to reach an agreement concerning matters of navigation and commerce. Two years earlier (March, 1785), commissioners appointed by Maryland and Virginia had assembled at Alexandria to form an agreement concerning the navigation of Chesapeake Bay and the rivers common to both States. They also took up other matters of general policy, recommending to the two States uniformity of commercial regulations and a uniform currency. The commissioners realized that the consent of the other commonwealths was necessary in order to make these recommendations effective; and the assemblies of Maryland and Virginia accordingly proposed that commissioners from all the States be invited to meet in a general convention for the purpose of adopting uniform commercial regulations.

Origin and
proceedings

271. The Annapolis Convention (1786). In response to the invitation of Virginia, twelve commissioners representing five States¹ — New York, New Jersey, Pennsylvania, Delaware, and Virginia — convened at Annapolis in September, 1786. The commissioners saw clearly that no important results could be accomplished unless more States were represented; and they realized that the subject of commerce was intimately connected with other matters likewise in need of adjustment.

Accordingly, the convention adopted a report, probably drawn by Hamilton, recommending that a general convention be held at Philadelphia on the second Monday of May, 1787, "to take into consideration the situation of the United States," and to devise the measures "necessary to render the constitution of the federal government adequate to the exigencies of the Union." This report was addressed

Call for
constitu-
tional con-
vention

¹ Nine States had selected commissioners, but only those from five States attended.

to the legislatures of the five States represented, and copies were also sent to Congress and to the executives of the other eight commonwealths. Congress hesitated for some time to indorse the recommendation for a convention; but at length, after several States had appointed delegates, adopted a resolution (February 21, 1787), declaring the desirability of calling a convention on the second Monday of the following May, "for the sole and express purpose of revising the Articles of Confederation."

272. The Constitutional Convention (1787). All the States except Rhode Island were represented in the Constitutional Convention, which held its sessions at Philadelphia from May 25 to September 17, 1787.

**Personnel
of the
convention**

Fifty-five delegates were at one time or another in attendance,¹ including many of the ablest leaders and statesmen of the day. Of these nine had been signers of the Declaration of Independence; while all except twelve had served at some time in Congress, and eighteen were then members. Prominent among the delegates were George Washington, Benjamin Franklin, James Madison, Edmund Randolph, Alexander Hamilton, James Wilson, Gouverneur Morris, William Paterson, Elbridge Gerry, Roger Sherman, Oliver Ellsworth, John Dickinson, Luther Martin, Charles Pinckney, Charles Cotesworth Pinckney, and others of less note, but representing the best talent and thought of the country.

273. Organization. The date of the convention had been originally fixed at May 14, 1787, but it was not until May 25 that delegates from a majority of the States were present. On this date an organization was effected by unanimously choosing George Washington as president, and William Jackson, secretary. It was decided that the convention should sit behind closed doors, and that all of its proceedings should be kept secret. As in the Confederation Congress, each State was to have one vote; and seven States were to constitute a quorum.

**Officers and
procedure**

274. The Contest over Nationalism. The business of the

¹ In all, sixty-two delegates had been appointed.

convention commenced on May 29, when Edmund Randolph presented the so-called "Virginia plan" ^{The Vir-} drafted by James Madison — the plan of gov- ^{ginia plan} ernment which was destined to form the basis of the constitution. The fundamental feature of this plan was, that it aimed to create a national government, consisting of legislative, executive, and judicial departments; and this government was to operate directly upon individuals, instead of upon the several States. Representation in both branches of the national legislature was to be proportioned either to the quotas of contributions by each State, or to the number of free inhabitants. The national legislative power was to extend to all matters concerning which the commonwealths separately were incompetent to legislate; that is, where individual State legislation would be inconsistent with the public good. Furthermore, the national legislature was to have the important power of vetoing any State laws contravening the national constitution, or any treaty made by the national government. Thus the Virginia plan contemplated the abandonment of the Articles of Confederation, and the establishment of a vigorous and efficient national government.

Many members, especially the delegates from the smaller commonwealths, were opposed to the establishment of such a government. They wished only to revise ^{New Jersey} the Articles of Confederation, leaving the States ^{plan} sovereign as before in most practical concerns. They proposed to give Congress additional powers over commerce and revenue, and to establish a federal executive and a system of national courts; but they desired to reserve to the States all other powers not expressly delegated. The views of these delegates were embodied in resolutions submitted to the convention by William Paterson of New Jersey, and known as the New Jersey plan.¹

¹ Two other plans were presented to the convention — one drawn by Charles Pinckney, the other by Alexander Hamilton.

275. The Great Compromise. In the debates that ensued, the question which aroused earnest and at times bitter discussion was that of representation according to population in both branches of the national legislature. Small commonwealths like Connecticut and New Jersey feared that proportional representation would mean that the national government would be dominated by the large States. On the other hand, delegates from the large commonwealths claimed that population was the only just basis for representation, and that it was unfair for the forty thousand people of Delaware to have the same voice in the national council as the half-million people of Virginia. This dispute marked the most critical period in the proceedings, and for a time it seemed that the convention was on the point of being dissolved. The crisis was finally averted by a compromise introduced by Sherman of Connecticut providing that representation, in the lower house should be proportioned to population, and that this branch should have the exclusive right to originate revenue bills; while in the upper house the States were to be equally represented. To this the large States reluctantly agreed, and the first great compromise of the constitution was effected. Assured of an equal voice in the upper house of the legislature, the small States were no longer opposed to the establishment of a strong national government; and from this point on the proceedings were more harmonious.

276. The Three-Fifths Compromise. Another important compromise was over the question of representation in the lower house; here the line of division was between the slaveholding and the non-slaveholding States. A considerable part of the population of the Southern States consisted of slaves, and the delegates from these commonwealths insisted that slaves should be counted in apportioning their quotas of Representatives; while the Northern delegates insisted that if the slaves

Proportional
representa-
tion

The basis of
representa-
tion

were property, they could not be counted as persons. It had already been decided that direct taxes were to be apportioned upon the same basis as Representatives; and this dispute was finally compromised by the adoption of the three-fifths rule,¹ according to which five slaves were to be counted as the equivalent of three white persons for the purpose of apportioning both Representatives and direct taxes. This compromise proved in the outcome a distinct advantage to the South; for direct taxes were levied only five times prior to the Civil War, while during this entire period the South by virtue of its slave population had the benefit of a largely increased representation in Congress.

277. **Navigation Acts and the Slave Trade.** A third compromise also had its basis in the difference between the occupations and domestic institutions of the North and the South. Commerce and shipbuilding were the chief industries of New England; while at the South, agriculture carried on by slave labor was practically the sole occupation. The commercial States desired regulation of commerce by the national government in order that American commerce and shipping might be protected from foreign discrimination; but certain slaveholding States — especially South Carolina — feared that unless a two-thirds vote was required to pass laws relating to commerce, the national government might tax or even entirely prohibit the slave trade. The South also feared that Congress might tax exports, thus laying a heavy burden upon its agriculture staples. The problem was finally solved by vesting in Congress power to regulate commerce by a majority vote, but forbidding the enactment of any law prohibiting the importation of slaves prior to 1808 (although a per capita tax of ten dollars might be levied upon each slave imported).² The taxation of exports by the States or by Congress was absolutely forbidden.

¹ The three-fifths ratio had been suggested by the Confederation Congress four years before. It had proposed that in apportioning the amount to be paid by the respective States, three fifths of the slaves should be counted.

² As part of this arrangement it was agreed that slaves escaping from one State to another should be returned to their owners.

278. **Other Compromises and Modifications.** Many other adjustments were found necessary in order to settle conflicting views among the delegates, so that it may indeed be said that the constitution is made up of a series of compromises. By one of these the election of the President was entrusted to the electoral college, and by another the presidential term was fixed at four years instead of seven. The resolutions offered by Randolph formed the framework of the constitution; but with these were incorporated six provisions from the New Jersey plan, together with perhaps twenty suggestions emanating from Pinckney.

One modification of the original Virginia plan is especially important, namely, the rejection of the proposal to confer upon the general government the right to negative State laws. In its place was substituted a clause from the New Jersey plan declaring the national constitution, laws, and treaties to be the supreme law of the land, binding upon the judges in every State, "anything in the constitution or laws of any State to the contrary notwithstanding."¹ This provision lessened the danger of a clash between federal and State governments; for the decision in case of a conflict of laws is made a judicial, rather than a political question. Since the federal constitution is the fundamental law of the land, all other laws must conform thereto; and the constitution, like other laws, is enforceable in the courts. The federal judiciary has jurisdiction over all cases arising under the federal constitution, laws, and treaties; and therefore has the final decision on all questions of constitutional interpretation. No other single provision of the constitution has worked more successfully in practice, or received more praise from foreign critics. This clause has made our government essentially one of law, rather than a government of men — thus ending the struggle commenced by the English barons against King John at Runnymede.

¹ *Constitution*, Art. vi, Par. 2.

279. **Sources of the Constitution.** The federal constitution has been characterized by a great British statesman¹ as "the most wonderful work ever struck off at a given time by the brain and purpose of man"; and for many years the generally accepted theory was, that a great part of our constitution was invented by the convention of 1787. Historical research has since shown that nearly every provision of the federal constitution had its origin in British or colonial precedents. The great achievement of the federal convention was in its skillful adaptation of former political experience to existing conditions. The British constitution, and still more, the colonial charters and State constitutions, furnished precedents of the highest value. By carefully working over the materials of old forms, rejecting that which had been tried and found wanting, moulding together familiar features that had proven valuable, a constitution was framed which is essentially a work of adaptation, enlargement, and emphasis, rather than one of creation. This very fact is the greatest tribute to the far-sighted craftsmen of the federal convention; for if the new instrument of government had not been deeply rooted in the political experience of the race, it would not have outlived the constitutions of so many European states, surviving the political and economic changes of more than a century, and meeting the supreme tests of foreign invasion and of civil war.

280. **Completion of the Convention's Work.** On September 8, the provisions of the constitution already agreed upon were sent to a committee of revision. A prominent member of this committee was Gouverneur Morris, to whose pen is due the lucid style and orderly arrangement of the instrument. Four days later the constitution came back for final consideration and revision, and after a few minor changes it was completed

¹ Gladstone, in *North American Review*, cxxvii, p. 185.

September 17, 1787. Several delegates had meanwhile left the convention, and only forty-two of the fifty-five members were present. Of these, thirty-nine signed the constitution, and Washington as president of the convention was authorized to transmit the document to the Congress of the Confederation, with the recommendation that the question of its adoption be submitted to conventions of delegates chosen by the people of the several States. Thereupon the convention adjourned, and the great question of ratification was before the people for decision.

281. Ratification. Immediately upon publication of the new constitution, the contest over ratification commenced. In the ranks of the opposition were some of the greatest names of the Revolutionary period. In Virginia the opposition was led by Patrick Henry, who feared that the constitution would lead to the annihilation of the States, and the destruction of the liberties of the people; and he was ably supported by Richard Henry Lee, George Mason, and James Monroe. In New York, the new plan of government was bitterly opposed by George Clinton, then governor of the State, and also by Robert Yates and John Lansing, delegates who had left the Constitutional Convention when the vote was announced committing that body to a new constitution. Among the opponents of the constitution were many who conscientiously believed that its provisions threatened the welfare and even the existence of the States; as well as a considerable number of politicians who feared that their influence would be diminished by the establishment of a new federal government. Also arrayed against the constitution was a considerable class opposed to the establishment of any government with power to protect property, to enforce the discharge of public and private debts, and to prevent further issues of dishonest paper money.

The Federalists, as the supporters of the new constitution styled themselves, included the great majority of the professional classes, as well as the property-holders, merchants, and conservatives, who welcomed the prospect of a strong national government. In Virginia the prominent supporters of the constitution were James Madison and Edmund Randolph, aided by John Marshall, later the greatest chief justice in our history; and the potent influence of Washington was

also exerted in its behalf. In New York the foremost Federalist was Alexander Hamilton, ably seconded by John Jay.

The press of the day abounded in publications designed to influence public opinion favorably or otherwise concerning the new constitution. The most noteworthy of these publications consists of a collection of essays which are now **The Federalist** published under the title of "The Federalist." These essays, eighty-five in number, were designed especially to gain supporters to the new constitution in the close State of New York. They were written by Madison, Hamilton, and Jay, and published in a New York newspaper under the common signature of "Publius." Even at this day "The Federalist" remains the greatest commentary upon the constitution ever written.¹

The most important of the anti-federalist publications were styled "Letters of a Federal Farmer," the authorship of which is ascribed to Richard Henry Lee of Virginia.

The Delaware convention was the first to accept the new constitution, and its ratification was prompt and unanimous (Dec. 6, 1787). In Pennsylvania the influence of Wilson and **Action of State conventions** Franklin secured ratification by a vote of forty-six to twenty-three. New Jersey, Georgia, and Connecticut followed. Massachusetts, after a sharp struggle, ratified by a vote of one hundred and eighty-seven to one hundred and sixty-eight. Maryland and South Carolina followed, increasing the number of ratifications to eight; so that if one more State could be obtained, the constitution would take effect among the nine thus ratifying. While a protracted contest was being waged in the New York and Virginia conventions, New Hampshire ratified, and the fate of the constitution was no longer in doubt. Virginia next ratified by a plurality of ten. In New York, ratification was finally wrested from a hostile convention by the splendid leadership of Hamilton; and by a vote of thirty to twenty-seven, New York accepted the constitution (July, 1788).

The first North Carolina convention by a close vote refused either to ratify or reject the constitution; and this State did not come into the Union until November, 1789, after the new government had been some months in operation. Rhode Island did not accept the constitution **North Carolina and Rhode Island** until May, 1790, her ratification being hastened by the fact that Congress in fixing duties upon imports treated this commonwealth as foreign territory.

After nine States had ratified, the Congress of the Confedera-

¹ Of these essays, Jay wrote five; while Madison was probably the author of twenty-nine, and Hamilton of fifty-one.

tion adopted a resolution fixing the first Wednesday in March as the date of the inauguration of the new government. **New gov-
ernment in
existence** As the first Wednesday was the fourth of March, that date became fixed for the beginning and the end of the presidential and congressional terms. The city of New York was named as the temporary seat of government. After some delay, owing to the fact that a quorum was not present in either branch, the two houses assembled on April 6, 1789, for the purpose of counting the electoral vote. It was found that Washington was the unanimous choice for President, and John Adams with one half the electoral votes became Vice-President. On April 30, Washington was inaugurated, and the new government was fully established.

GENERAL REFERENCES

- Bancroft, George, *History of the United States* (1883-1885), vi, 195-474.
 Beard, C. A., *American Government and Politics* (1910), ch. iii.
 ——— *Readings in American Government and Politics* (1910), ch. iii.
Cambridge Modern History (1903), vii, pp. 243-304.
 Curtis, George T., *Constitutional History of the United States* (1903), i, pp. 225-256.
 Elliot, Jonathan, *The Debates in the Several State Conventions, on the Adoption of the Federal Constitution* (1836-1845), v.
 Farrand, Max, "Compromises of the Constitution," *American Historical Review*, ix, pp. 479-489.
 Fiske, John, *The Critical Period of American History* (1888), chs. vi-vii.
 Foster, Roger, *Commentaries on the Constitution of the United States* (1895), i, 1-45.
 Hamilton, Madison, and Jay, *The Federalist* (ed. by Lodge, H. C., 1904).
 Hart, A. B., *American History told by Contemporaries* (1906), iii, chs. 9-12.
 Holst, Hermann E. von, *Constitutional and Political History of the United States* (1889), i, pp. 47-59.
 Landon, Judson S., *The Constitutional History and Government of the United States* (1905), pp. 65-124.
 McLaughlin, A. C., *The Confederation and the Constitution* (1905), chs. xi-xviii.
 McMaster, John B., *History of the People of the United States* (1907), i, pp. 390-453.
 Robinson, James H., "The Original and Derived Features of the Constitution," *Annals of American Academy of Political and Social Science*, i, 203-243.
 Schouler, James, *History of the United States* (1894), i, ch. i.
 Sparks, Edwin E., *The United States of America* (1904), i, chs. v-vi.
 Stevens, Charles E., *Sources of the Constitution of the United States considered in its Relation to Colonial and English History* (1894).
 Story, Joseph, *Commentaries on the Constitution of the United States* (5th ed., 1905), i, secs. 272-305.

- Thorpe, Francis N., *The Constitutional History of the United States* (1901), I, 291-595.
 Tucker, John R., *The Constitution of the United States* (1899), I, 325-337.
 Winsor, Justin, *Narrative and Critical History of America* (1888), VII, pp. 226-257.

QUESTIONS AND EXERCISES

1. Discuss the reasons which made a new constitution imperative. (*The Federalist*, nos. xv, xvi, xxi, xxii.)
2. In what respect was it fortunate that the Articles of Confederation could not be readily amended?
3. Discuss the efforts to amend the Articles of Confederation. (Kaye, P. L., *Readings*, pp. 39-44.)
4. Mention an important public service performed by each of the delegates named in Section 272.
5. Which were the "small States" at the time of the Constitutional Convention?
6. Compare the New Jersey plan with the Articles of Confederation. In what respects was the New Jersey plan an improvement? (Madison, *Debates*, pp. 163-167.)
7. Compare the Virginia plan with the federal constitution, noting which features of the Virginia plan were adopted and which ones eliminated. (Madison, *Debates*, pp. 59-64.)
8. Explain how the constitution corrected the chief defects of the government under the Articles of Confederation.
9. Was the compromise on the subject of representation an equitable one?
10. Prepare a report upon the several plans proposed in the convention for electing the President.
11. Point out analogies between our constitution and that of Great Britain; between the federal constitution and the early State constitutions.
12. Discuss the work of the Committee on Detail. (Madison, *Debates*, pp. 449-462.)
13. Prepare a report upon the contest over ratification. (Landon, J. S., *Constitutional History of the United States*, pp. 89-124.)

CHAPTER XX

THE AMENDMENT AND DEVELOPMENT OF THE CONSTITUTION

282. Modification of the Original Constitution. The federal constitution as it exists to-day differs little in form from the instrument framed in 1787; but in reality **Amendment, interpretation, and usage** the original constitution has been modified so as to keep pace with the great social and industrial changes of the last century. This modification has been effected in three ways: (1) by amendment, in accordance with the method provided in the instrument itself; (2) by interpretation, that is, the construction placed upon its terms by the three departments of government, especially the judiciary; (3) by the development of a body of political usages and customs,¹ which, although not in conflict with its terms, materially modify its spirit and workings.

283. Process of Constitutional Amendment. Of these three ways of modifying the constitution, that by amendment is the most direct and effective, but also the **Proposal and ratification** most difficult of application. Article V of the constitution provides two methods by which amendments may be proposed: first, by a vote of two thirds of each house of Congress;² or second, by a convention called by Congress on application of the legislatures of two thirds of the States. Amendments proposed by either method must be ratified by three fourths of the States. This ratification may be made either by the State legislatures, or by special State conventions, according as Congress proposes the one or the other mode of ratification.

¹ Sometimes called the "conventions" of the constitution.

² The President's approval is not necessary to a proposed constitutional amendment.

Thus far fifteen amendments have been made to the constitution, all of which have been proposed by Congress and ratified by the State legislatures. No federal convention has ever been held for the purpose of proposing amendments, nor has Congress ever chosen the method of ratification by State conventions. These fifteen amendments were adopted at four different periods, and hence may be classified into four groups, according to the time of adoption.

**Fifteen
amendments
adopted**

284. **The Bill of Rights.** The first group includes ten amendments, constituting the so-called "bill of rights." In the contest over the ratification of the constitution, one of the objections most frequently heard was the lack of a bill of rights. Seven States when ratifying proposed the adoption of amendments which should guarantee the personal rights and liberties of the individual, as well as the rights of the States, against federal oppression. Accordingly, at its first session in 1789, Congress prepared and submitted to the States twelve amendments placing express limitations upon the powers of the federal government. Ten of these were ratified by the requisite number of States during the next two years, thereby becoming a part of the constitution (1791). Of these amendments the first eight are designed to guarantee to individuals certain fundamental civil rights concerning which the constitution itself makes no provision. The ninth and tenth amendments confirm the principle that the government of the United States is one of enumerated powers, those powers not conferred by the constitution being reserved to the States or to the people.

**Purpose
and scope**

285. **The Eleventh Amendment.** The eleventh amendment was adopted in 1798, in consequence of the decision of the United States Supreme Court¹ that a State like an individual was liable to be sued in a federal court by a citizen of another State or of a foreign

**Federal
jurisdiction**

¹ *Chisholm v. Georgia*, 2 Dall. 419.

country. The eleventh amendment reversed this construction by providing that the federal judicial power should not be construed to extend to any suit against a State by citizens of another State or foreign country.

286. The Twelfth Amendment. The twelfth amendment introduced a change in the method of electing the President and Vice-President, and was adopted in consequence of the election of 1800. The original section of the constitution provided that electors were to cast their ballots for two persons without specifying which should be President and which Vice-President. The influence of the party system made it necessary to modify this provision, so that the electors could designate explicitly their choice for each office; for otherwise a tie vote might result. Accordingly the twelfth amendment, adopted in 1804, provided that the electors should cast separate ballots for each officer.

287. Amendments during the Reconstruction Period. The fourth group or reconstruction amendments include the thirteenth, fourteenth, and fifteenth amendments, adopted in 1865, 1868, and 1870, respectively. These were added to the constitution in consequence of the Civil War. The thirteenth amendment abolished slavery throughout the United States and all places subject to its jurisdiction. The fourteenth defines citizenship, and seeks to prevent the States from discriminating against certain classes of citizens. The fifteenth declares that the rights of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

288. Constitutional Changes through Interpretation. The constitution has also been modified and expanded through interpretation, especially through the construction placed upon its terms by the United States Supreme Court. The importance of this tribunal in the development of the federal constitution can hardly be

overestimated. "The constitution speaks of the age in which it was written, more than a century ago. The court expounds it in the language of its own age, holding fast to the old words and powers, but expanding them to keep pace with the expansion of our country, our people, our enterprises, industries, and civilization. Great controversies arise over questions and conditions impossible for the framers of the constitution to have anticipated. What would they have thought, if one had asked them whether a State law regulating the transmission or taxation of telegraphic messages would be unconstitutional, because encroaching upon the power of Congress to regulate commerce among the States? Plainly, a constitution made a century ago might well be expected to prove inadequate to the wants of the ever increasing population of the United States. That such is not the case is remarkable evidence of its wisdom, and also of the wisdom of its exposition."¹

289. The Doctrine of Implied Powers. In the interpretation and expansion of the constitution, the doctrine of implied powers has been of the utmost importance. The Supreme Court has uniformly held Basis of implied powers that the federal government possesses not only the powers expressly granted in the constitution, but also those which are included within, or necessarily implied from, powers expressly granted. In other words, where it appears that a power has been granted to the federal government, the constitution is to be liberally construed so as to give effect to the grant.² This construction is authorized by the constitution itself, which declares that Congress shall have power to make all laws which shall be "necessary and proper" for carrying into execution the powers conferred upon the federal government.³

290. Chief Sources of Implied Powers. The doctrine of implied powers has been developed chiefly in connection with three

¹ Landon, J. S., *The Constitutional History and Government of the United States*, p. 273.

² For the rule of construction, see Section 299.

³ *Constitution*, Art. I, Sec. 8, Par. 18.

express powers: the taxing and borrowing power, the power to regulate foreign and interstate commerce, and the war power. The Supreme Court has held that under the taxing and borrowing power, Congress may charter a federal bank and exempt its notes from State taxation; or create a system of national banks, and levy a prohibitive tax upon the issues of State banks; or issue paper money and make it a legal tender for all debts; or establish a tariff system not only as a means of obtaining revenue, but for the purpose of protecting domestic industries against foreign competition.

Similarly, the power to regulate commerce has been held to authorize legislation concerning navigation, pilotage, and maritime contracts; regulating the transportation of goods and passengers between the States of the Union, or between the United States and foreign countries; restricting or prohibiting immigration; establishing an Interstate Commerce Commission with large powers of control over interstate traffic; and providing for the construction of public works in aid of commerce.

The war power has proven one of the most elastic of constitutional powers. The embargo declared by Congress during Jefferson's administration (although never passed upon by the Supreme Court) was probably justifiable as a war measure. Further, under the war power, territory may be acquired and governed in accordance with the laws of Congress, as in case of the territory ceded at the close of the Mexican and Spanish-American wars.¹ The most striking illustration of the scope of the war power was during our great Civil War, when President Lincoln exercised almost despotic powers with the sanction of Congress and the nation.

291. Constitutional Changes through Usage. Our constitution has also been largely developed and modified by usage, that is, by long-continued customs, rules, and political practices, which have sprung up in connection with the constitution. These usages or customs are not laws, since they are not recognized or enforced by the courts; but they have almost the force of law, and often materially modify the spirit and workings of the written constitution.

¹ Territory may also be acquired under the treaty-making power; e. g., the purchase of Louisiana, the Gadsden purchase, and the purchase of Alaska.

292. **Influence of Usage upon the Executive.** One of the most important of these usages or understandings has entirely changed the position of the presidential electors. The framers of the constitution intended that the electors should exercise a wise discretion in choosing the chief executive. In the first two presidential elections this intention was realized; but since 1800 it has been clearly understood that the electors shall not exercise independent judgment, but shall merely ratify the choice of the political party to which they belong. No law prevents an elector from voting contrary to the wishes of those who elect him, but such an act would be deemed a most serious breach of public trust. In this way the electoral system as originally planned has been entirely superseded by a usage or understanding requiring electors merely to register the vote of their party.

Another unwritten rule having almost equal weight is that limiting the reëligibility of the President. The constitution places no restriction whatever on his reëligibility, and "The Federalist" ¹ declared that the President would and ought to be elected as often as the people deemed him worthy of confidence. Washington declined a third term, partly on the ground that unlimited reëligibility is not in harmony with republican institutions. The example thus set was followed by Jefferson, and public opinion has indorsed the precedent so strongly that it is now unwritten law that a President may not serve more than two terms.

The President's power of appointment has likewise been largely modified through certain usages. In the case of important appointments, ² the President is generally obliged by custom to confer with the Senators and Representatives from the State where the appointee lives. In other words, Senators (if of the same political party as the President) claim the right to control the federal patronage of their respective States. The written constitution vests the appointing power in the President; but the unwritten rule of political practice has transferred a large part of this power to the Senate.

Another important constitutional understanding is that with

¹ *The Federalist*, no. LXVIII.

² Except cabinet appointments, which are generally confirmed as a matter of course.

reference to the President's power of removal. The constitution makes no provision for removals except through the process of impeachment; and the question early arose whether the consent of the Senate was necessary to the removal of officers appointed with the consent of that body. The First Congress adopted the view that the power of removal belongs to the President alone, and this is now the settled rule upon this subject.

Usage has likewise created the President's cabinet, an institution unknown to the written constitution.¹ Custom alone has determined that in addition to their duties as administrative officials, the heads of the various executive departments shall meet with the President as an advisory board, popularly known as the cabinet.

293. Usages affecting Congress. Congress, as well as the federal executive, has been affected by important usages. Foremost among these is the committee system of legislation, which prevails in both branches of Congress. The committee system is entirely an outgrowth of custom, with no basis whatever in the written constitution; but it affects profoundly the character and work of the federal lawmaking body.

The great political power of the Speaker of the House of Representatives is likewise due solely to usage. The constitution contemplates merely a presiding officer or moderator, like the President of the Senate; but political practice has decreed that the Speaker, through his power to appoint committees and to control debate, shall wield more influence in government than any other man except the President.

An almost unvarying custom has added an additional qualification to those prescribed by the constitution for Representative. This is the unwritten rule requiring residence within the district which he represents, as well as residence within the State.

¹ The only reference to this subject is the clause providing that "the President may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." — *Constitution*, Art. II, Sec. 2, Par. 1.

294. **Constitutional Modifications through the Party System.** The development of the constitution has been profoundly affected by our system of political parties. Although parties have grown up independently of the constitution and are nowhere contemplated by its provisions, it is through the party system that the machinery of government is carried on. Thus through the agency of parties the Presidency has been made a representative institution, the candidates for that office being chosen in party conventions, and voted for by electors who merely register the choice of the voters. The influence of the party system has also contributed largely to the importance of the Speakership; and partisan motives determine the composition of congressional committees, and profoundly affect legislation. Managing committees, local, State, and national, the party convention and the party caucus — in short, all the machinery of the party system — have long been fully established as part of the unwritten constitution. These and other **Party usages** form an integral part of our constitutional system; so that it may indeed be said that the written constitution provides only the skeleton of government, which custom and usage have transformed into a living organism.

GENERAL REFERENCES

- Ames, H. V., "Amendments to the Constitution" (1891), *American Historical Association Papers*, v, 253-263.
 Ashley, R. L., *American Government* (1903), ch. xix.
 Beard, C. A., *American Government and Politics* (1910), ch. iv.
 ——— *Readings in American Government and Politics* (1910), ch. iv.
 Black, H. C., *Handbook of American Constitutional Law* (1897), pp. 41-45.
 Borgeaud, C., *Adoption and Amendment of Constitutions* (1895), pts. I, III.
 Bryce, James, *The American Commonwealth* (1907), I, chs. xxxi-xxxv.
 Burgess, John W., *Political Science and Comparative Constitutional Law* (1902), I, pp. 142-154, 184-252.
 Cooley, Thomas M., *Constitutional Law* (1898), ch. xii.
 Hamilton, Alexander, "Opinion on the Constitutionality of a National Bank" (Macdonald's *Select Documents*, II, pp. 81-98).
 Hinsdale, B. A., *American Government* (1900), XLVII-XLVIII.
 Lalor, J. J., *Cyclopedia*, articles on "Amendment, Constitution" (U. S.).

- Landon, J. S., *The Constitutional History and Government of the United States* (1905), ch. xv.
 Reinsch, P. S., *Readings on the American Federal Government* (1909), ch. xv.
 Schouler, James, *Constitutional Studies* (1904), pp. 190-203.
 Story, Joseph, *Commentaries on the Constitution* (5th ed. 1905), secs. 1857-1909, 1915-1974.
 Tiedemann, C. G., *The Unwritten Constitution of the United States* (1890).
 Tucker, John R., *The Constitution of the United States* (1899), II, ch. XI.
 Woodburn, J. A., *The American Republic and its Government* (1908), pp. 86-93, 122, 274, 391.

QUESTIONS AND EXERCISES

1. Mention some of the principal constitutional amendments which have been proposed but not ratified.
2. What amendment was recently submitted to the States by Congress? How many States must ratify this in order that it may become a part of the constitution.
3. Is the process of amending the federal constitution too difficult? Give your reasons.
4. Contrast the process of amending our constitution with the method of amending the British constitution.
5. Compare the first eight amendments to the federal constitution with the bill of rights in your State constitution.
6. Why impose express limitations upon the federal government if it can exercise only those powers which are expressly granted, or necessarily implied from the grant of express powers?
7. Prepare a report upon the decision in the case of *Chisholm v. Georgia* (Section 285).
8. Give an account of the election of 1800, and explain why the twelfth amendment was necessary.
9. Prepare a report upon the adoption of the thirteenth, fourteenth, and fifteenth amendments.
10. Discuss the modification of the constitution by interpretation. (Bryce, James, *The American Commonwealth*, I, ch. xxxiii.)
11. Discuss the development of the constitution by usage. (Bryce, James, *The American Commonwealth*, I, ch. xxxiv.)
12. Prepare a report upon the usages or conventions of the British constitution. (Dicey, A. V., *The Law of the Constitution* (1902), ch. xiv.)
13. Suggested readings on constitutional development: Kaye, P. L., *Readings*, pp. 51-73.

CHAPTER XXI

RELATIONS OF FEDERAL AND STATE GOVERNMENTS

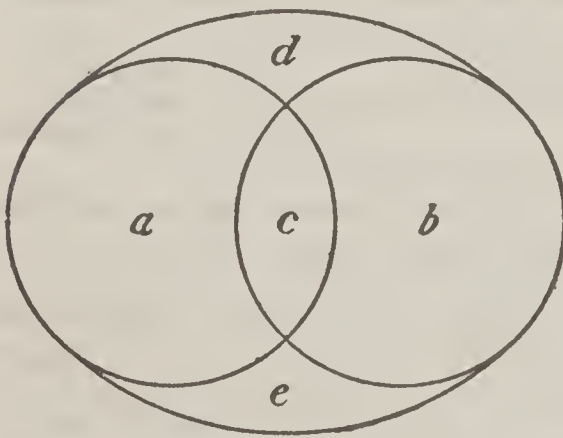
295. **The Federal System.** The great problem before the Constitutional Convention was not only to create a strong national government, but so to adjust its relations to the existing State governments as to produce a harmonious whole. This was accomplished through the adoption of the federal system under which two distinct governmental authorities exist, the one national, the other State. Each of these agencies is intended to perform that part of the work of government for which it is best adapted, and both rest upon the same ultimate authority — that of the people of the United States. It was John Dickinson who first compared the federal plan to the solar system, pointing out that the national government resembled the sun and the States the planets, each moving in its respective orbit, a deviation from which would imperil the entire system.¹

296. **General Distribution of Powers.** In the division of powers between the national and State governments, the constitution assigns to the general government those functions which are essentially national in character, while the States are left in control of matters which directly concern their people as communities. Since it would be impossible to name in the federal constitution all the powers of both governmental agencies, only those of the national government are enumerated, all others — except those specifically prohibited — being left to the State governments or reserved to the people.

¹ Madison's Papers, *Elliot's Debates* (2d ed.), v, 168.

Accordingly the powers of government under our constitution may be grouped into five classes: —

- (a) Those vested exclusively in the national government.
- (b) Those reserved exclusively to the States.
- (c) Those powers (generally called concurrent) which may be exercised by either the national or State governments.
- (d) Powers denied to the national government.
- (e) Powers denied to the State governments.



The ellipse represents the sum total of governmental powers. Circle *a* represents powers delegated to the national government; circle *b*, powers reserved to the States; segment *c*, concurrent powers; segment *d*, powers prohibited to the national government; segment *e*, powers prohibited to the States. — Adapted from Tiedemann, C. G., *The Unwritten Constitution of the United States*.

DISTRIBUTION OF GOVERNMENTAL POWERS

297. Powers of the National Government. To the national government is entrusted control of foreign relations in general, including the making of war and peace; maintenance of an army and navy; regulation of foreign and interstate commerce; control of territories, naturalization, and bankruptcy; of coinage, currency, weights and measures; of post offices, post roads, copyrights and patents; the establishment of federal courts; the punishment of offenses against federal law; the protection of citizens against unlawful or discriminating legislation by any State; and the right to borrow money and to tax for national purposes.

In exercising these powers, the authority of the national government is direct and immediate, operating not through the agency of the States but directly upon individuals. Thus the national government does not call on the States for funds, but levies its own taxes. Nor

Direct
authority

does it rely on the States to execute its commands; for the decrees of the national courts are executed by federal marshals, and in case of need the whole military power of the Union may be employed against persons who resist its laws.

298. **Classification of Federal Powers.** The powers of the national government are sometimes classified as express and implied. Express powers include those expressly enumerated in the constitution; while implied powers are those which by reasonable implication are included in, or result from, those expressly granted. Implied powers have the direct sanction of the constitution, which declares that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the powers vested in the national government.¹

Express and
implied
powers

299. **Interpretation of Federal Powers.** Since the national government possesses only those powers expressly or impliedly granted by the federal constitution, it follows that all doubts as to the existence of any power must be settled by reference to the terms of that instrument. In determining what acts are necessary and proper in the exercise of enumerated powers, a liberal interpretation has been applied by the United States Supreme Court, the final arbiter upon constitutional questions. "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."²

Rule of
construction

Although the federal government is one of limited rather than of general powers, yet in the exercise of the powers granted it is supreme, and any conflict between federal and State authority must be settled upon this principle. The language of the constitution

Supremacy
of federal
law

¹ *Constitution*, Art. I, Sec. 8, Par. 18.

² Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheaton, 316.

is clear and unequivocal in pointing out the supremacy of federal law: "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."¹

In order that the supremacy of the federal government may be maintained without danger of encroachment on the part of the States, the final interpretation as to its powers rests with the federal courts. While State courts may be called upon to construe the federal constitution as a part of the written law, the final decision in such cases is for the Supreme Court of the United States; and the interpretation of this court when rendered becomes a part of the supreme law, binding upon all other courts, and upon all individuals throughout the Union.

300. Powers of State Governments. In contrast with the federal government, the State government is one of general powers. In determining whether a power is rightfully exercised by a State, the question is not whether the power is granted, but rather whether it is withheld. In other words, the States possess all powers of government except those which their own constitutions, or the federal constitution, explicitly or by plain inference withhold. They are the ordinary governments of the country, the federal government being its instrument only for particular purposes.

¹ Article VI, Paragraph 2. — In expounding this provision it has been said: "If any one proposition could command the universal assent of mankind, we might expect it would be this: that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is a government of all; its powers are delegated by all; it represents all; and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control it. The nation, on those subjects on which it can act, must necessarily bind its component parts." — Marshall, Chief Justice, in *McCulloch v. Maryland*, 4 Wheaton, 316, 405.

Thus the States have a large field of governmental action, important not only from the variety of subjects included, but also because of the direct relation of these ^{Classes} powers to the individual. Practically the entire ^{of powers} body of criminal and private law is regulated by the States, including laws against crime, and those regulating the personal and property rights of individuals. The States also have complete charge of local government, of education, and of the elective franchise. They create and regulate corporations, supervise domestic commerce, make legal regulations concerning capital and labor, exercise the far-reaching police power, care for the weak and dependent classes, regulate marriage and divorce, maintain militias, establish systems of courts, borrow money, and levy taxes.

301. Concurrent Powers. Most of the powers granted to Congress are vested exclusively in that body. The power vested in Congress is exclusive if it is made so by ^{Exclusive} the express language of the constitution; or if ^{powers} the constitution confers the power upon Congress and prohibits the States from exercising a like authority; or if the subject-matter of the power is national in character, and can be governed only by a uniform system.

In a few cases the powers granted to Congress are not exclusive, but concurrent. In this field the States may pass laws which are valid until Congress sees fit ^{Concurrent} to exercise the power with which it is invested, ^{powers} whereupon State laws are suspended, either wholly or so far as they are inconsistent with federal legislation. Thus the States control the subject of weights and measures in the absence of congressional action. Similarly, the States have passed laws on the subject of bankruptcy during those periods of our history when there was no federal bankruptcy act. The States may also provide by law for the punishment of counterfeiting, this being an offense against the State as well as the nation.

302. Prohibitions upon the National Government. The

principal limitations imposed on the federal government are set forth in Article I, Section 9, of the federal constitution, and in the first ten amendments. Most of these restrictions are designed either to protect individual liberty, or else to safeguard the States against discriminating legislation on the part of the federal government.

303. Restrictions designed to protect Individual Liberty. Among the important limitations for the protection of the individual are the following: —

(1) The privilege of the writ of *habeas corpus* may not be suspended unless in case of rebellion or invasion the public safety requires.¹

(2) Congress may not pass a bill of attainder (depriving persons of life or property by legislative act), or enact any *ex post facto* law (making criminal an act which was not an offense when committed).²

(3) Congress may not define treason, since the definition of that word is placed in the constitution itself.³

(4) No laws may be passed establishing or prohibiting any religion, or abridging freedom of speech or of the press, or the right of the people peaceably to assemble and petition the government for a redress of grievances; or infringing upon the right of the people to keep and bear arms.⁴

(5) Soldiers may not be quartered in any house in time of peace without the consent of the owner; and security of the dwelling-house is further assured by prohibiting unreasonable searches and seizures, and restricting the method of issuing search-warrants.⁵

(6) No person may be tried for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury; or be subject for the same offense to be twice put in jeopardy of life or limb; or be compelled in any criminal case to be a witness against himself; or be tried otherwise than by an impartial jury of his State and district, with the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.⁶

¹ *Constitution*, Art. I, Sec. 9, Par. 2.

² *Ibid.*, Art. I, Sec. 9, Par. 3.

³ *Ibid.*, Art. III, Sec. 3, Par. 1.

⁴ *Ibid.*, Amendments I and II.

⁵ *Ibid.*, Amendments III and IV.

⁶ *Ibid.*, Amendments V and VI.

(7) Excessive bail may not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.¹

(8) No one may be deprived of life, liberty, or property without due process of law, nor may private property be taken for public use without just compensation.²

(9) The right of trial by jury must be preserved in all common-law actions where the value in controversy exceeds twenty dollars; and no action determined by a jury may be reëxamined otherwise than according to the rules of the common law.³

(10) Slavery and involuntary servitude (except as a punishment for crime) is prohibited within the United States, and all places subject to its jurisdiction.⁴

(11) The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.⁵

(12) The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.⁶

304. Other Limitations upon the Federal Government.

Most of the remaining limitations are designed to protect the States against discriminating legislation by the federal government. Thus no capitation or other direct tax may be imposed except in proportion to the census.⁷ No duties or taxes may be levied upon exports from any State, nor may any commercial regulation give preference to the ports of one State over those of another.⁸ Further, all import duties and internal revenue taxes must be uniform throughout the United States.⁹

Discriminating legislation forbidden

Finally, no title of nobility may be granted by the United States; and no person holding federal office may, without the consent of Congress, accept any present, office, or title from any king, prince, or foreign state.¹⁰

Titles of nobility and gifts

305. Express Prohibitions upon State Governments.

Prohibitions imposed upon the States are contained in Article I, Section 10, and in the thirteenth, fourteenth, and fifteenth amendments. Of these limitations the first class is designed to prevent the States from infringing upon the sphere of the national government. Thus no State may:

Protection of the national sphere

(1) Enter into any treaty, alliance, or confederation; or, with-

¹ *Constitution*, Amendment VIII.

² *Ibid.*, Amendment V.

³ *Ibid.*, Amendment VII.

⁴ *Ibid.*, Amendment XIII.

⁵ *Ibid.*, Amendment IX.

⁶ *Ibid.*, Amendment X.

⁷ *Ibid.*, Art. I, Sec. 9, Par. 4.

⁸ *Ibid.*, Art. I, Sec. 9, Pars. 5 and 6.

⁹ *Ibid.*, Art. I, Sec. 8, Par. 1.

¹⁰ *Ibid.*, Art. I, Sec. 9, Par. 8.

out the consent of Congress, enter into any agreement or compact with another State or with a foreign power.

(2) Grant letters of marque or reprisal; or, without the consent of Congress, keep troops or ships of war in time of peace; or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

(3) Coin money, emit bills of credit, or make anything but gold and silver coin a tender in payment of debts.

(4) Without the consent of Congress, lay any duty of tonnage, or lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing inspection laws.

306. Second Class of Express Limitations. A second class of express limitations aims to secure private and political rights from encroachment on the part of the States. Thus no State may:

(1) Pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

(2) Grant any title of nobility.

(3) Establish or allow slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted.¹

(4) Make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.²

(5) Deprive any person of life, liberty, or property, without due process of law.³

(6) Deny to any person within its jurisdiction the equal protection of the laws.⁴

(7) Assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave.⁵

(8) Deny or abridge the right of citizens of the United States to vote, on account of race, color, or previous condition of servitude.⁶

307. Implied Limitations upon State Governments. In addition to the foregoing express prohibitions, certain other limitations are implied either from express provisions of the federal constitution, or from the nature of the relation between federal and State governments. Thus in some cases the powers granted to Congress are exclusive, either because so declared in express terms (as the power to exercise exclusive legislation over the seat of government); or because the

¹ Constitution, Amendment XIII.

² *Ibid.*, Amendment XIV.

³ *Ibid.*, Amendment XIV.

⁴ *Ibid.*, Amendment XIV.

⁵ *Ibid.*, Amendment XIV.

⁶ *Ibid.*, Amendment XV.

subject-matter of the power is national in character, demanding a uniform system, and necessarily precluding any form of State action (as the power to establish a uniform system of naturalization).

Similarly, the provisions defining the jurisdiction of the federal courts; securing to the citizens of each State all the privileges and immunities of citizens in the several States; requiring that each State give full faith and credit to the public acts, records, and judicial proceedings of every other State; enjoining interstate extradition; guaranteeing to each State a republican form of government, — all carry with them an implied prohibition of any State legislation which in any way would impair their effectiveness. From the nature of the relation between the States and the federal government, it follows that there is an implied prohibition on the part of the States to place any tax upon the instruments or means selected by the federal government to carry out its powers. Other implied prohibitions

308. **Privileges of States in the Union.** Foremost among the important privileges belonging to States as members of the federal Union is that of representation in Congress, in which body each State is entitled to two Senators, and a number of Representatives in proportion to its population. Similarly, each State has a right to participate in the election of a President by choosing electors for that purpose. Representation

Another important privilege is the guaranty by the United States to each State of a republican form of government. By republican government is meant one in which those exercising authority act in a representative capacity, the ultimate power of control being vested in the people themselves. Republican government in a State might be threatened through invasion by some foreign power, and an attempt to establish a government under its authority; or by an insurrection having for its object the overthrow of the existing government. In either case it would be the duty of the federal government to interpose, and to protect the people of the State by the employment of the military force of the United States. Guaranty of republican government

Each State has the right of territorial integrity — it cannot be divided without its consent. Finally, the States have certain important financial privileges. In the past the United States has on several occasions distributed considerable sums of money among them, as well as public lands of immense value; while at the present time the federal government makes annual appropriations for the support of agricultural stations, and of State agricultural and mechanical colleges.

Other privileges 309. **Duties of the States in the Union.** The privileges of the States as members of the Union involve corresponding duties. In the first place, the States are under obligation to keep up the forms of the national government by choosing presidential electors, electing Senators and Representatives, and fixing the franchise which qualifies persons to vote for members of the House of Representatives.

To help maintain national government The second and most important duty of the States is to remain in the Union. Before the Civil War, those who championed the doctrine of State sovereignty argued that the States were and had always been sovereign and independent; and that the Union was a voluntary compact from which any State might withdraw if it chose. Upon this issue the Civil War was waged, and the result of that conflict established forever the principle that the Union is not a compact between States, but a permanent government established by the people of the United States, and alterable only through constitutional amendment. In the language of Chief-Justice Chase, “the constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.” There can be no such thing as peaceful secession; once a State is in the Union there is “no place for reconsideration, or revocation, except through revolution, or through consent of the States.”¹ Hence the ordinances of secession adopted

¹ *Texas v. White*, 7 Wall. 700.

by the Southern States were absolutely null and void, and those States remained legally members of the Union, although the outcome of the Civil War practically reduced them to the position of conquered territory.

Finally, the States have other miscellaneous duties toward the Union, many of which have been already mentioned. They are to maintain a militia over which the federal government has large powers of control; and they are under obligation not to enact legislation in conflict with federal law.

310. Interstate Obligations. In addition to their obligations towards the federal government, the States owe important duties to each other as equal members of the same Union. By a provision of the federal constitution the citizens of each State are “en-
Equal
privileges
of citizens
 titled to all the privileges and immunities of citizens in the several States.”¹ The purpose of this provision is to promote the unity of the American people by preventing discriminations against citizens of other States. This clause secures to the citizen of one State the right to travel about freely, or to settle or trade within the limits of any other; to acquire and hold property in any commonwealth, and to be exempt from any higher taxes or other burdens than are imposed upon citizens of that State; also to claim the protection of any State government, and to have access to its courts.

Political privileges, as the right to vote, to hold office, and to serve on juries, are of course not shared, these rights being properly reserved by each State for its own
Political
privileges
 citizens. A State may also limit the right to practice law to its own citizens, as well as the right to share in the use of the common property of the State (for example, to fish in the public waters, or to hunt game within the State limits).

311. Public Acts and Judicial Proceedings. The federal

¹ *Constitution*, Art. IV, Sec. 2, Par. 1.

constitution provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State."¹ This does not mean that the laws of any State are binding upon persons outside its limits, but that if it becomes necessary for the courts of New York, for example, to determine what are the public statutes of Pennsylvania, that fact may be established by introducing in evidence the Pennsylvania legislative records. Further, if the case in the New York court is one affected by Pennsylvania laws, that court will endeavor to give those laws the same effect that they would have in the Pennsylvania courts.²

Proving
public
acts

A similar rule prevails with respect to judicial proceedings. A judgment rendered in one State by a court of competent authority having jurisdiction of the parties and subject-matter is conclusive in all other States in an action between the same parties and involving the same issues.

Effect of
judgments

312. Interstate Extradition. Extradition is another interstate obligation imposed by the federal constitution. In order that fugitive criminals may be duly tried and punished, the constitution provides that "a person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."³

Constitu-
tional
provision

The usual procedure when a criminal takes refuge in another State is to have him arrested and held until the governor of the State where the crime was committed sends a requisition to the executive of the State where he is found, asking his return; whereupon he is turned over to the authorities of the State issuing the requisition.⁴

Arrest of
fugitives

If the requisition is regular, proceeding from the proper authority and accompanied by the necessary papers, it is the duty of the governor on whom the requisition is made to surrender the fugitive. But there is no way by which he can be compelled to perform it, and in practice requisitions are sometimes refused on the ground that the crime charged is unknown to the laws of the refuge State, or even because of personal or political motives on the part of the governor.⁵

Duty to
honor
requisitions

¹ Constitution, Art. iv, Sec. 1, Par. 1.

² For example, contracts made in one State, and valid where made, are usually recognized as valid when it is sought to enforce them in another State.

³ Constitution, Art. iv, Sec. 2, Par. 2.

⁴ If the requisition proceedings are illegal, *habeas corpus* proceedings may be brought either in the State or federal courts to inquire into the lawfulness of the prisoner's detention.

⁵ *Kentucky v. Dennison*, 24 How. 66.

GENERAL REFERENCES

- Ames, H. V., *State Documents on Federal Relations* (1906).
 Black, H. C., *American Constitutional Law* (1897), chs. II, IX-X, XVIII-XX.
 Bryce, James, *The American Commonwealth* (1907), chs. II, IV, XXVII-XXX.
 Burgess, John W., *Political Science and Comparative Constitutional Law* (1902), pp. 184-252.
 Cooley, Thos. M., *Constitutional Law* (1898), chs. X, XII-XVI.
 ——— *Constitutional Limitations* (1903), ch. II.
 Hart, A. B., *Actual Government* (1903), chs. II, VI.
 Landon, J. S., *The Constitutional History and Government of the United States* (1905), ch. XVII.
 McClain, E., *Constitutional Law in the United States* (1905), chs. III, XXX.
 Pomeroy, J. N., *Constitutional Law of the United States* (1888), part III, chs. I, III.
 Schouler, James, *Constitutional Studies* (1904), pp. 115-155, 178-184, 190-202.
 Story, Joseph, *Commentaries on the Constitution of the United States* (5th ed., 1905), secs. 1331-1409, 1804-1831, 1857-1909.
 Tucker, J. R., *Constitution of the United States* (1899), I, ch. VII; II, chs. XI, XIV.
 Willoughby, W. W., *Nature of the State* (1896), ch. X.
 Wilson, Woodrow, *Constitutional Government in the United States* (1908), ch. VII.
 ——— *The State* (1906), secs. 1083-1125.
 Woodburn, J. A., *The American Republic and its Government* (1908), ch. II.

QUESTIONS AND EXERCISES

1. Explain fully how the federal government brings its authority to bear directly upon individuals. Contrast this with the condition under the Articles of Confederation.
2. Prepare a report upon the decision of the Supreme Court in the case of *McCulloch v. Maryland*. (Section 299.)
3. May a State court declare a national law unconstitutional?
4. Explain the reason for giving the national government control of each of the subjects enumerated in Section 297.
5. If the first eight amendments had not been passed, could Congress have exercised these powers? Do these prohibitions apply to the States? (Section 303.)
6. Can a State government levy a tax upon United States bonds? Upon the capital invested in national banks?
7. Mention some of the rights of States which cannot be infringed by the federal government.
8. May the President suppress an insurrection against State authority without the consent of the State?
9. Enumerate the provisions of the federal constitution which were adopted in order to insure interstate comity.
10. Suggested readings on relations between State and federal governments: Kaye, P. L., *Readings*, pp. 74-94.

CHAPTER XXII

THE SENATE

313. Congress a Two-House Body. The legislative authority granted by the federal constitution is vested in a Congress consisting of two houses, the Senate and the House of Representatives. In creating a Congress of two branches, the framers of the constitution followed the precedent of Great Britain, as well as that of nearly all the thirteen State assemblies, wherein legislative powers were vested in two separate houses.¹ It was urged that each house would act as a check upon rash and ill-considered legislation on the part of the other, and that two houses would be less likely than a single body to encroach upon executive and judicial authority. The two-house plan thus established now prevails in all of the States of the Union, and is likewise a characteristic feature of the legislative assemblies of all important countries.²

314. Equal Representation of States. As the result of a great historical compromise adopted by the Constitutional Convention to reconcile the conflicting desires of the large and the small States, the commonwealths are equally represented in the Senate, each

¹ Only Pennsylvania and Georgia had legislative assemblies consisting of a single house. Georgia created two houses in 1789, Pennsylvania in 1790. Vermont also had a one-house legislature from 1786 until 1839.

² Great diversity prevails in the numbers, mode of selection, and powers of the upper houses in other countries. The British House of Lords consists of about six hundred hereditary peers. The French Senate numbers three hundred members, chosen by indirect election for a term of nine years, one third being elected every three years. In Switzerland the Council of State consists of forty-four members, two being chosen by each canton in such manner and for such term as the canton may see fit. The German Bundesrath consists of fifty-eight members who represent the princes of twenty-three States and the people of three free cities, in whom the sovereignty of the German Empire resides. The Italian Senate and the Austrian Herrenhaus consist of members appointed by the Crown for life.

In all these countries except Germany, the upper house occupies a subordinate position as compared with the popular branch of the legislature, and seldom ventures to reject measures upon which the lower house is determined.

electing two members; while in the House representation is proportioned to population. Thus the House represents the nation as a whole, the national principle; while the Senate represents the federal idea, equality of States.¹

This plan has the advantage of giving a method of choice for the Senate different from that of the House, thus creating a chamber distinct in character; and it also forms a connecting link between the national and State governments. On the other hand, it is often urged that it is unjust that States having less than one sixth of the population should choose a majority of the entire Senate, while more than five sixths of the people of the country are represented by a minority of that body.² With the object of preventing any departure from the original compromise, the constitution provides that "no State without its consent shall be deprived of its equal suffrage in the Senate."³

Advantages
and dis-
advantages

315. Election of Senators. The constitution prescribes that Senators shall be elected by the legislatures of their respective States. The time and manner of this election was left to the individual commonwealths until 1866, when Congress exercised its authority to regulate the election by a uniform federal statute.

Choice by
State legis-
latures

The election occurs on the second Tuesday after the meeting and organization of the State legislature chosen next preceding the expiration of the senatorial term. In each house of the State legislature, the members declare their votes *viva voce*. At noon of

Election
regulated by
federal law

¹ However, the members of the Senate vote as individuals and do not cast the vote of the State as such; nor are they subject to instruction or recall by the legislatures that elect them (although State legislatures sometimes pass resolutions purporting to "instruct" their Senators).

² Ten large States could control the House, but in the Senate they would have only twenty votes. However, American politics have never turned upon conflicts between the small and the large States.

³ *Constitution*, Art. v. — It is sometimes said that this is the only provision of the constitution which cannot be changed by amendment. This is incorrect, for the sovereignty of the people is unlimited, and they may amend the constitution in this or any other respect, or make a new one omitting the principle of equal representation. Hence this guaranty merely represents the plighted faith of the framers of the constitution to the small States that their equal representation shall not be taken away.

the following day, both houses meet in joint assembly, and if it appears from the journals that the same person has obtained a majority of all the votes in each house, he is thereby elected. If such is not the case, the legislature proceeds to vote in joint assembly at least once each day until a Senator is chosen. When voting in joint assembly, a majority of all persons elected to both houses must be present and vote to form a quorum, and a majority of the entire number voting is necessary to elect.

If a vacancy occurs in the Senate, by resignation or otherwise, while the legislature of the State concerned is in session, that body may elect a Senator on the second Tuesday after receiving notice of the vacancy. If the legislature is not in session, the governor of the State may make a temporary appointment to continue until the legislature assembles, or (in case of a prolonged contest in that body) until its adjournment. In case the legislature adjourns without having been able to agree upon a Senator, the seat remains vacant, since the Senate has declined to admit as members persons appointed by the governor in case an intervening legislature has failed to elect.

It was believed by the framers of the constitution that election of Senators by State legislatures would form a valuable link between the State and federal governments; and also that indirect election would be more likely to lead to the choice of distinguished men than would a direct vote of the people. But in practice the plan is open to serious criticism. It is urged that it intensifies the strife between the national political parties in the field of State politics, for each party puts forth unusual efforts to secure a majority in the legislature which elects a Senator. Hence State interests and policies are subordinated to an issue of national politics. Again, after a long and bitter contest, it sometimes happens that no candidate is able to secure a majority, and a "deadlock" occurs; meantime the State is without its proper representation in the Senate, and the time and attention of its legislature is so taken up that State interests suffer.¹ Moreover, notorious instances have occurred where unscrupulous men have endeavored to secure seats in the Senate by wholesale bribery of State legislators, either by money or by a corrupt use of patronage.

¹ For example, in the year 1901, senatorial deadlocks existed in the legislatures of Nebraska, Montana, Oregon, and Delaware, throughout the greater part of the legislative sessions. In Delaware the deadlock continued until adjournment, leaving the State with no representative in the Senate.

To obviate these objections, direct election of Senators by popular vote has frequently been proposed, a change which involves the great practical difficulty of amending the constitution. The House of Representatives has repeatedly passed resolutions to amend the constitution in this respect, but until the Sixty-first Congress, such proposals received slight consideration at the hands of the Senate.

**Proposed
constitu-
tional
amendment**

316. Political Agencies modifying Indirect Election.

Largely through the agency of political parties, the election of Senators is becoming more nearly direct. In many commonwealths a candidate for the Senatorship is named by each political party in the convention held for the nomination of State officers. The successful candidates for the legislature are then expected to cast their votes for the individual thus nominated. If this custom should become general, it would place the virtual election of Senators in the party conventions, and the party majority in the legislature would become merely a ratifying body, like the Electoral College. This would be a valuable substitute for popular election, provided the voters are able to control the nomination of delegates through a good primary nominating system; otherwise it merely transfers the choice of Senator to the clique of party managers who control the convention.

**Nomination
by conven-
tions**

There is another way by which custom is modifying the method of choice in the direction of popular election. In a number of States, especially at the South, candidates for Senators are nominated at the party primaries, and the members of the legislature are held to be under a moral obligation to vote for the successful party candidate.¹ Nebraska and Oregon have gone a step further, and provide that the voters shall be allowed to express their preference for Senators at the November election, candidates having been previously nominated by a direct primary held for each party. Candidates for the legislature generally pledge themselves to vote for the popular choice, whatever his political party.

**Nomination
by primaries**

In any event, the legislature's power of election is generally nominal, the actual choice being made by the caucus of the majority party. Before the legislature meets, the members belonging to each party hold a caucus, and decide which candidate shall receive the solid party vote. If

**Choice by
the party
caucus**

¹ Senators are now nominated by direct primary in the following States: Alabama, Arkansas, California, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin.

the party candidate has already been nominated by the convention or primary, the choice of the caucus is thus predetermined. All loyal party members are then expected to cast their votes in accordance with the choice of the caucus.¹ Sometimes members of the majority party in the legislature refuse to be bound by the decision of the caucus, and nominate a candidate of their own. With three candidates in the field the contest is often a long and bitter one between the candidates of the "regular" and "insurgent" factions of the majority party, and the nominee of the minority party.

317. The Senatorial Term. The senatorial term is six years, and members are so classified that the terms of one third expire every two years — thus making the Senate a permanent body. It was believed that the six-year tenure would prove long enough to secure the talent and experience necessary for legislation, and to operate as a stable feature in the government. Senators are more frequently reelected than otherwise, and the average term of service is about twelve years.

318. Qualifications of Senators. The constitutional qualifications for Senators are three, and relate to age, citizenship, and residence. To be eligible to membership, one must be at least thirty years of age, must have been nine years a citizen of the United States, and must be an inhabitant of the State for which he is chosen.² The States have no power to add to or subtract from these constitutional qualifications; and whether they are lacking in a particular case is a question for the Senate itself to decide.

The constitution expressly creates two disqualifications — the holding of a federal office contemporaneously, and participation in rebellion against the United States, after having taken oath as a government officer to support the constitution.³ Congress or the Senate can make only such further disqualifications as are reasonably im-

¹ Under ordinary circumstances the vote of the members belonging to the minority party merely represents a compliment to some distinguished leader.

² *Constitution*, Art. I, Sec. 3.

³ Congress may remove the latter disqualification by a two-thirds vote of each house.

plied in the constitutional provisions. Thus the corrupt use of his powers by a legislator has been made a disqualification.

319. Rights and Privileges of Members. Members of Congress have the constitutional right to a compensation for their services, the amount to be determined by statute and paid out of the treasury of the United States. At present both Senators and Representatives receive \$7500 per year, to which is added an allowance for clerk hire, stationery, and traveling expenses.

Except in case of treason, felony, or breach of peace, both Senators and Representatives are privileged from arrest during attendance at the sessions of their respective houses, and in going to and returning from the same. The object of this provision is to exempt members from being interfered with by judicial process while in the performance of their official duties.¹

Finally, members of Congress have the important privilege of freedom of speech and debate in their respective houses. That is, only the house itself can call members to account for their utterances in that body; and a congressman cannot be prosecuted in the courts for libel or slander on account of any utterances in the house to which he belongs, or for the official publication of what he says.

320. The Senate's Powers in Legislation. With a single exception, the legislative powers of the Senate are identical with those of the House, and bills may originate indifferently in either branch. The exception is in case of revenue bills, which must originate in the House, although the Senate may propose or concur with amendments as on other bills.²

¹ The exemption is not of great practical value, since seizure of the person is not ordinarily authorized except in criminal cases, as to which the exemption does not apply. However, this privilege secures exemption from such a process as a *subpoena*, or a summons to serve on a jury.

² Thus in 1894 the Wilson Tariff Bill, which originated in the House, was transformed in the Senate by the addition of one hundred and forty-three amendments.

321. Executive Functions of the Senate. The Senate is not only a legislative body, but also an executive chamber, having two important executive functions: **Treaties and appointments** first, the power of approving treaties; and second, that of confirming the most important presidential appointments. At the time of the adoption of the federal constitution, the upper house of the State legislatures had a large degree of control over the governor's power of appointment;¹ and a similar distrust of the executive induced the framers of the constitution to give the Senate control over these two important executive powers.²

322. Power to approve Treaties. All treaties negotiated by the President must be submitted to the Senate for approval, and in order to be ratified must receive the favorable vote of two thirds of the Senators present when the vote is taken. Although the President is not obliged to consult with the Senate during the negotiation of a treaty, in practice he usually does so, especially with the committee on foreign relations. The Senate considers treaties, as well as other executive business, in executive or secret session.³ The treaty may be approved or rejected as a whole; or it may be ratified in part, additional articles being recommended as amendments. When thus changed, the treaty does not become law until both the President and the foreign power have consented to the amendment.

323. Confirmation of Executive Appointments. Through its second executive function, that of confirming nominations submitted by the President, the Senate exercises considerable control over the civil administration. This provision was designed to prevent abuses of power on the part of the executive, but it has operated

¹ In most of the colonies there was a body known as the governor's council, appointed by the king, whose consent was necessary to the validity of certain executive acts. After the colonies became independent, the governor's council disappeared except in Maine, Massachusetts, and New Hampshire. In most States the control over appointments which it formerly exercised has been transferred to the upper branch of the State legislature.

² For the special power of the Senate to elect a Vice-President, see Section 361.

³ During the first five years of the Senate's history, or until 1794, all its sessions were in secret.

to give the Senate a large control over federal patronage through the practice known as "senatorial courtesy." By this term is meant the mutual support that Senators give to one another, especially in the confirmation of executive appointments. Cabinet appointments are generally confirmed as a matter of course, and diplomatic appointments are seldom rejected; but nominations to federal positions within a State¹ are ordinarily not confirmed unless approved by the Senators from the commonwealth in question, provided they are of the same political party as the President.

In considering appointments, the Senate acts in secret session, but reports of their proceedings commonly become public. In an executive session the galleries are cleared, the doors closed, and the obligation of secrecy is imposed upon every Senator, under penalty of expulsion if he discloses the confidential proceedings. But the obligation does not weigh heavily upon some members, and the newspaper correspondents generally manage to find out what occurs.

The President may convene the Senate in special session to consider treaties or appointments. On thirty-six occasions in our national history such special sessions have been held.

324. The Senate's Judicial Function. The judicial function of the Senate is to sit as a court of impeachment for the trial of persons formally accused, by the House of Representatives, of treason, bribery, or other high crimes and misdemeanors. Impeachment is not limited to indictable offenses, but includes conduct which the courts of law cannot reach, as intemperance or abuse of official power. The President, Vice-President, and all civil officers of the United States are liable to impeachment; and the term civil officers in-

¹ Especially revenue collectors, postmasters in large cities, customs officers, federal judges, district attorneys, etc.

cludes all federal officers, except military and naval officers (who are tried by courts-martial), and members of Congress (who are subject only to the rules of the house of which they are members).

The House of Representatives has the sole power to prefer charges of impeachment, that is, to present the articles of accusation as the grand jury presents an indictment. The trial then occurs before the Senate, the process resembling that of a trial by jury. The House appoints a committee of members to prosecute the charges before the Senate; the accused is entitled to counsel, and to full opportunity to present his defense; each Senator takes an oath to judge impartially; witnesses are examined; and the Senate then deliberates in secret session while arriving at a decision. In ordinary impeachment trials, the Vice-President or the President *pro tempore* of the Senate presides; but in case of the impeachment of the President, the presiding officer is the chief-justice of the United States Supreme Court.

A two-thirds vote of the Senators present is necessary to a conviction; and in case of conviction, the punishment cannot extend further than removal from office, and disqualification to hold any office under the United States. If the offense leading to impeachment is one punishable by law, the person impeached is liable to trial by the courts, as in case of any one who violates the law. The President has no pardoning power in cases of impeachment.¹

¹ There have been eight cases of impeachment in our history, only two of which resulted in conviction. The two men convicted were both judges of the United States district court: John Pickering, judge for New Hampshire, impeached in 1803 for malfeasance in office, including drunkenness and other offenses; and West H. Humphreys, judge for Tennessee, impeached in 1862 for disloyalty and inciting rebellion. The most noted impeachment case in our history was that of President Johnson, impeached in 1868 for violating the Tenure of Office Act, and other offenses; acquitted by the narrow margin of one vote (thirty-five Senators voting guilty, and nineteen not guilty).

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), ch. XI.
 Beard, C. A., *American Government and Politics* (1910), ch. XII.
 ——— *Readings in American Government and Politics* (1910), ch. XII.
 Bryce, James, *The American Commonwealth* (1907), I, chs. X–XII.
 Burgess, J. W., *Political Science and Comparative Constitutional Law* (1902), II, pp. 41–58.
 Fairlie, J. A., *National Administration of the United States* (1905), ch. III.
 Ford, H. J., *The Rise and Growth of American Politics* (1898), ch. XXI.
 Foster, Roger, *Commentaries on the Constitution of the United States* (1895), I, chs. VII, XI–XIII.
 Hamilton, Madison, and Jay, *The Federalist* (ed. by Lodge, 1904), nos. LXII–LXVI.
 Hart, A. B., *Actual Government* (1903), ch. XIII.
 Haynes, G. H., *Election of Senators* (1906).
 Kerr, C. H., *The United States Senate* (1895).
 Reinsch, P. S., *American Legislatures and Legislative Methods* (1907), chs. I, III.
 ——— *Readings on American Federal Government* (1909), chs. IV–V.
 Story, J., *Commentaries on the Constitution of the United States* (5th ed., 1905), I, secs. 690–813.
 Tucker, J. R., *Constitution of the United States* (1899), I, chs. IX–X.
 Wilson, Woodrow, *Constitutional Government in the United States* (1908), ch. V.
 ——— *The State* (1906), secs. 1274–1284.
 Woodburn, James A., *The American Republic and its Government* (1908), ch. IV.

QUESTIONS AND EXERCISES

1. Make an outline showing the points of resemblance between Congress and your State and city legislative departments.
2. Compare the Senate with the British House of Lords.
3. Has the Senate accomplished the special purposes which it was designed to fulfill? (*The Federalist*, nos. LXII–LXVI.)
4. How many Senators were there April 30, 1789? For what terms did these Senators serve?
5. What arguments can you present for and against the equal representation of States in the Senate?
6. Name the Senators from your State. How long have they served? When do their terms expire? To which political party do they belong? What political offices did they hold before being elected to the Senate?
7. Were your Senators nominated by conventions, by party primaries, or by the Nebraska method? Which plan do you consider preferable, and why?
8. Give arguments for and against the popular election of Senators.
9. Have there been any recent instances in your State legislature of a "deadlock" over the election of a Senator?
10. How are the political parties represented in the present Senate? Name several of the most prominent Senators of each party.
11. Compare the term and qualifications of United States Senators with those of your State senators.

12. Make a similar comparison as to rights and privileges.
13. Which of the special powers of the United States Senate is exercised by your State senate?
14. State the advantages and disadvantages of having the Senate participate in appointments; in treaties.
15. State the objections to the practice of "senatorial courtesy."
16. Prepare a list of executive officials appointed by the President subject to confirmation by the Senate.
17. What officials in your congressional district were thus appointed? Was your Senator consulted?
18. Give an account of the controversy between President Garfield and Senators Conkling and Platt over appointments in New York State.
19. Name several treaties which have been ratified by the Senate within the last twenty years. Have any been rejected?
20. What is the smallest number of Senators who at the present time can pass a bill? Confirm an appointment? Ratify a treaty?
21. Is a Senator bound to regard instructions by the legislature of his State?
22. Prepare a report upon the impeachment trial of Andrew Johnson. (Sherman, *Recollections*, I, 413-432; Blaine, *Twenty Years of Congress*, II, 341-384; Cox, *Three Decades of Federal Legislation*, 578-594.)
23. May a Senator be appointed to a federal office which was created during his term as Senator? (*Constitution*, Art. I, Sec. 6, Par. 2.)
24. Suggested readings on the Senate: Reinsch, P. S., *Readings on American Federal Government*, ch. v; Kaye, P. L., *Readings*, pp. 156-183.

CHAPTER XXIII

THE HOUSE OF REPRESENTATIVES

325. **Composition of the House.** The House of Representatives, often referred to simply as the House, consists of 391 members elected every second year by direct vote in congressional districts of nearly equal population. The number of Representatives to which any State is entitled depends upon its population as ascertained by the federal census, taken every ten years. Since the adoption of the fourteenth amendment (1868), the entire number of individuals in each State (except untaxed Indians) is counted in determining the population entitled to representation.¹

Present
basis of re-
presentation

Each of the territories is permitted to send to the House a delegate, who may speak on questions affecting his territory, but may not vote. Thus in the Sixty-first Congress (1909–1911), Alaska, New Mexico, Arizona, and Hawaii were represented by delegates, Porto Rico and the Philippines by resident commissioners.

Territorial
delegates

326. **The Method of Apportionment.** After each decennial census, Congress determines upon the number of Representatives of which the House shall consist. The population of all the States is then divided by this number, the quotient being the ratio of representation; and the population of each State is divided by this

Ratio of re-
presentation

¹ Under the original provision of the constitution, Representatives and direct taxes were apportioned among the States according to population. In enumerating the population, all free persons were to be counted, including also persons bound to service for a term of years and excluding Indians not taxed; and including also *three fifths of all other persons*. In other words, five slaves were to be counted as equivalent to three white persons in apportionment and in levying direct taxes. This was the famous three-fifths rule, adopted as a compromise between the Northern and Southern members of the Constitutional Convention.

ratio to ascertain the number of Representatives to which it is entitled. Thus after the twelfth census had been taken (1900), Congress passed an act fixing the number of Representatives at 386.¹ Dividing the aggregate population of all the States, as ascertained by the twelfth census, by 386, gave a quotient of 194,182 as the ratio of representation. Then the population of each State was divided by this ratio, the resulting quotients being the number of Representatives of the respective States.

After each decennial census, the number of members has been increased;² otherwise some States would have had fewer Representatives than during the previous decade, since population does not increase uniformly in all parts of the country.³ Under the present ratio, four commonwealths, Delaware, Nevada, Idaho, and Wyoming, would be without representation were it not for the constitutional provision that each State shall have at least one Representative. When a new State is admitted, it is at once given representation, its members or member being additional to the number provided for by the preceding apportionment.

327. Districting a State. The boundaries of the congressional districts within each commonwealth are determined by its legislature, subject to the restriction of federal law that the districts shall be as nearly as practicable of equal population, and composed of compact and contiguous territory. In case the apportionment act changes the representation of a State, or if the decennial census shows that its population has increased unequally in various sections, redistricting the State becomes a necessity.

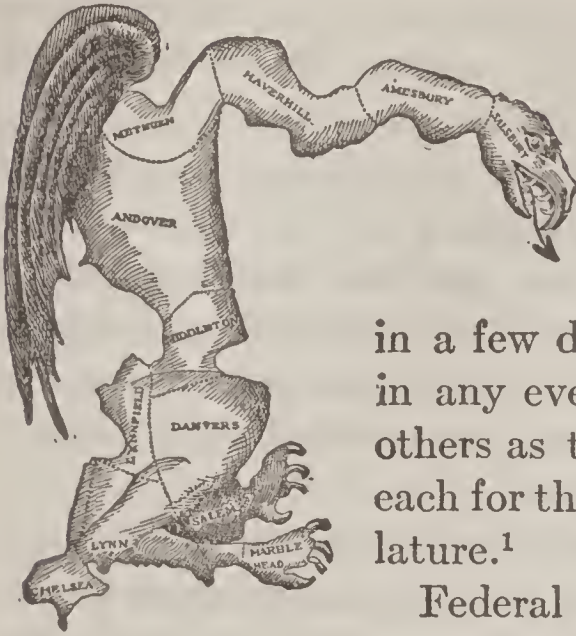
Sometimes States are redistricted for less legitimate reasons. The dominant party in the legislature may en-

¹ Five additional members were added for Oklahoma in 1901.

² With a single exception — under the reapportionment of 1842.

³ Although the House is now so large as to be unwieldy, it is smaller than the corresponding body in European countries. In Great Britain the House of Commons consists of 670 members; the German Reichstag has 397 members; the French Chamber of Deputies, 584.

deavor, by a process known as “gerrymandering,” so to arrange the district lines as to secure a party majority in the greatest possible number of districts. This is done by massing the opposition votes



THE ORIGINAL “GERRY-MANDER”:

in a few districts certain to be hostile in any event, and by so arranging the others as to insure a safe majority in each for the party in control of the legislature.¹

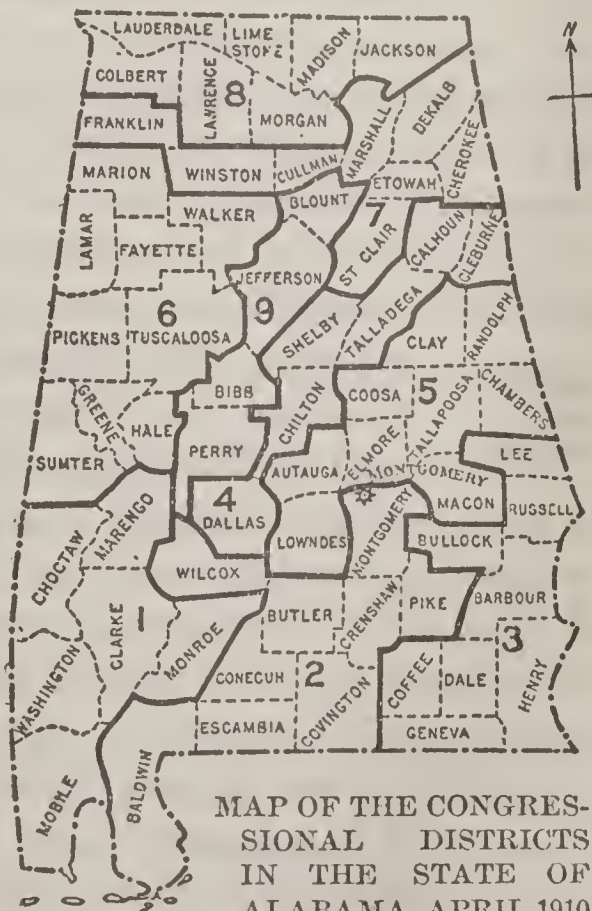
Federal law requires that the districts be composed of compact and contiguous territory; but it has

Evasion of statutory restrictions

been held that territory is contiguous if it touches the district at any point, and the result has been that some States have created districts of the most amazing irregularity. The statutory requirement that districts

¹ In 1892, by a carefully planned gerrymander, the Democrats in Indiana were enabled to elect eleven congressmen with a total vote of 259,190, leaving only two congressmen to the Republicans, who cast a vote of 235,668.

² “In 1812 when Elbridge Gerry was governor of Massachusetts, the Republican legislature redistributed the districts in such wise that the shapes of the towns forming a single district in Essex County gave to the district a somewhat dragon-like contour. This was indicated upon a map of Massachusetts which Benjamin Russell, an ardent Federalist and editor of the ‘Centinel,’ hung up over the desk in his office. The celebrated painter Gilbert Stuart, coming into the office one day and observing the uncouth figure, added with his pencil a head, wings, and claws, and exclaimed, ‘That will do for a salamander!’ ‘Better say a Gerry-mander!’ growled the editor; and the outlandish name, thus duly coined, soon came into general currency.” — Fiske’s *Civil Government in the United States*.



MAP OF THE CONGRESSIONAL DISTRICTS IN THE STATE OF ALABAMA, APRIL 1910

An example of gerrymandering.

shall be of nearly equal population has also been disregarded. In order to gain a partisan advantage, legislatures have occasionally created districts with almost double the population of other districts in the same State.¹

No uniform national suffrage 328. **The Suffrage.** When the constitution was framed, no attempt was made to establish a uniform national suffrage; instead it was provided that members of the House of Representatives should be chosen by those persons in the several commonwealths who are qualified to vote for the more numerous (i.e., the lower) branch of the State legislature.

States determine qualifications The States are thus given control of the suffrage; and in order to determine who may vote for congressmen in any commonwealth, it is necessary to examine the qualifications prescribed by the State constitution for those who may vote for members of the lower branch of the State legislature. Generally speaking, universal manhood suffrage prevails except as to the criminal, insane, or other defective or delinquent classes. But in a few commonwealths, a property qualification is prescribed; and an educational qualification, as ability to read or write, is required in fourteen States.²

Constitutional limitations State control of the suffrage is subject to two important limitations contained in amendments to the federal constitution. The fifteenth amendment was intended to secure the suffrage to negro citizens by providing that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude." Furthermore, section two of the fourteenth amendment provides that in case the right to vote in any State is denied (except for crime) to male citizens who are twenty-one years of age, the State's representation in the House shall be proportionately reduced.

¹ In New York the fifteenth congressional district (Republican) had 165,701 inhabitants in 1905, while the eighteenth (Democratic) had 450,000 inhabitants.

² Alabama, California, Connecticut, Delaware, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, North Carolina, South Carolina, Virginia, Washington, Wyoming.

329. The Election of Representatives. The constitution confers upon the State legislatures the power to make regulations as to the time, place, and manner of holding elections for Representatives; but reserves **Early State control** to Congress the right to make or alter these regulations at its discretion. For fifty years, in the absence of federal legislation, control of elections was left to the States; and there was considerable diversity in regard to the time and method of electing Representatives. Some commonwealths chose their Representatives on a general ticket (i.e., all voters in the State cast their ballots for the entire number of Representatives allotted to the commonwealth); while other States followed the district plan now in use, each voter casting his ballot for but one Representative.¹

In 1842 Congress exercised its reserved power of regulating the election of Representatives, and passed an act which provided that from that time on, all Representatives should be chosen by districts, and not **Federal regulations** by general ticket. Other important regulations subsequently adopted by Congress provide that the time for the election of Representatives shall be the Tuesday next following the first Monday in November of the even numbered years;² that the election shall be by written or printed ballot; and that the districts arranged by the State legislatures shall be as nearly as may be of equal population, and composed of compact and contiguous territory.

In a majority of States, candidates for the House of Representatives are nominated by district conventions composed of delegates representing units of local government within the congressional district, such as counties, or in the more thickly settled areas, **Nomina-
tion of
candidates**

¹ Under the general ticket plan, the party which carried the State would generally secure all the congressmen, while under the district plan the delegation from a State ordinarily contains representatives of both parties.

² Congress has exempted from the operation of this rule three States whose constitutions contain clauses establishing a different date. These are Oregon, where the election occurs on the first Monday in June; Vermont, where it takes place on the first Tuesday in September; and Maine, where it is held on the second Monday in September.

assembly districts, townships, or wards. But in a large number of States (including Wisconsin, Nebraska, Oregon, Kansas, and Oklahoma) the older convention method has been superseded by the direct primary system, under which candidates are nominated by the voters at a party primary.

330. The Term of Representatives. Representatives are elected for a term of two years, the legal term commencing on the fourth of March following the election. Actual service does not commence (except in case of special session) until the first Monday in December, thirteen months after the election. Reëlection is frequent, and the average term of service is about five years.

If a vacancy occurs in the representation from any State by reason of death, resignation, or expulsion of a member, the federal constitution authorizes the governor to issue a writ of election to fill the vacancy. A special election is then held in the district where the vacancy occurs, the Representative chosen serving for the remainder of the term.

331. Qualifications for Representatives. The constitutional qualifications prescribed for Representatives relate to age, citizenship, and inhabitancy. A Representative must have attained the age of twenty-five years, must have been a citizen for at least seven years, and must be an inhabitant of the State from which he is chosen.¹ The House itself determines whether these qualifications exist, and has even rejected duly elected individuals who possessed the constitutional qualifications.² The States cannot add to the constitutional qualifications; but universal custom having almost the force of law prescribes residence within the district which the member represents.

332. Rights, Privileges, and Disabilities of Members. The privileges of members of the House are the same as

¹ The constitution also provides that no person holding any office under the United States may be a member of Congress during his continuance in office.

² Thus the Fifty-sixth Congress excluded Brigham H. Roberts of Utah, on the ground that he was living in polygamy in violation of both State and federal law.

those of Senators, and include the right to compensation, the privilege of freedom from arrest (except in cases of treason, felony, or breach of peace), and freedom of speech and debate. Representatives, like Senators, may not hold any civil office under the United States during their congressional term; nor be subsequently appointed to any office which has been created, or the salary of which has been increased, during their term.

333. **Special Powers of the House.** The House has three special powers not shared by the Senate: the exclusive power to initiate revenue bills; the sole right of impeachment; and the power to elect a President of the United States in case no candidate has a majority of the electoral votes. These exclusive powers are not of great importance, and add little to the prestige of the House.

Three
special
powers

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), ch. XII.
 Bryce, James, *The American Commonwealth* (1907), I, chs. XIII-XIV.
 Beard, C. A., *American Government and Politics* (1910), ch. XII.
 Burgess, J. W., *Political Science and Comparative Constitutional Law* (1902), II, pp. 41-58.
 Fairlie, J. A., *National Administration of the United States* (1905), ch. III.
 Follett, M. P., *The Speaker of the House of Representatives* (1904).
 Ford, H. J., *The Rise and Growth of American Politics* (1898), ch. XX.
 Foster, Roger, *Commentaries on the Constitution of the United States* (1895), I, chs. VII-X.
 Fuller, H. B., *Speakers of the House* (1909).
 Hamilton, Madison, and Jay, *The Federalist* (ed. by Lodge, 1904), nos. LII-LIV.
 Hart, A. B., *Actual Government* (1903), ch. XIII.
 Reinsch, P. S., *American Legislatures and Legislative Methods* (1907), chs. I-II.
 ———, *Readings on American Federal Government* (1909), ch. VII.
 Story, J., *Commentaries on the Constitution of the United States* (5th ed., 1905), I, secs. 571-689.
 Tucker, J. R., *Constitution of the United States* (1899), I, chs. IX-X.
 Wilson, Woodrow, *Constitutional Government in the United States* (1908), ch. IV.
 ———, *The State* (1906), secs. 1285-1298.
 Woodburn, James A., *The American Republic and its Government* (1908), ch. V.

QUESTIONS AND EXERCISES

1. Prepare a report showing points of similarity and contrast between the House of Representatives and the British House of Commons.
2. How many congressional districts in your State? How do these compare in area and population? Is the division a fair one, or has the gerrymander been employed in the interest of the dominant political party?
3. Prepare a report upon the gerrymander.
4. Who is your Representative? To which political party does he belong? Length of his service in Congress? Previous political experience? When does his term expire?
5. What is the number of your congressional district? What counties does it comprise? Which political party generally carries the district?
6. How are the political parties represented in the present House? Name prominent leaders of each party in the House.
7. Was your Representative nominated by a party convention or by a direct primary? Which is the better method?
8. Compare the special powers of the House of Representatives with the special powers of the lower branch of your State legislature.
9. Why should bills for raising revenue originate in the House of Representatives? What is the practice in the British Parliament?
10. Why was the election of a President entrusted to the House of Representatives, in case of failure of the Electoral College to choose a President? In this event, why is the vote in the House taken by States?
11. What is the smallest number of Representatives who can pass a bill for the first time? Over the President's veto? What number could elect a President, in case the election should go to the House?
12. Is it unfortunate that there is so long an interval between the election of Representatives and the meeting of Congress?
13. What qualifications are required in your State in order to permit one to vote for a United States Representative? Who is authorized to determine these qualifications?
14. Compare the term and qualifications of a United States Representative with those of your State representative.
15. May the State legislatures add to the qualifications imposed by the federal constitution for membership in the House of Representatives? May the House itself impose additional qualifications?
16. Under what circumstances may the House exclude from membership a person who has been duly elected?
17. What are the advantages and disadvantages of our practice of requiring a Representative to reside in the district which elects him?
18. What is the present ratio of representation? What are Congressmen-at-large?
19. Contrast the procedure in the House of Representatives with that in the British House of Commons. (Kaye, P. L., *Readings*, pp. 149-155.)

CHAPTER XXIV

CONGRESSIONAL METHODS

334. **Term and Sessions of Congress.** The life of each Congress coincides with the legal term for which Representatives are elected; that is, it commences on March 4 of the odd-numbered years, and ends on March 4, two years later. Hence Congresses are numbered according to biennial periods. The First Congress began its legal existence on March 4, 1789, and expired at noon on March 4, 1791; the Second Congress lasted from March 4, 1791, to March 4, 1793, and so on to the Sixty-second Congress whose legal existence extends from March 4, 1911, to March 4, 1913.

The constitution requires Congress to assemble at least once each year, the date of meeting — which Congress may change — being the first Monday in December. Two regular sessions are held: the long session from December of each odd year until Congress adjourns, generally in the following June or July; and the short session, beginning when Congress assembles in December of each even year, and ending at noon on the following fourth of March. Thus Congress is ordinarily in session only about one half of its legal term. Special sessions may be called either by the President or by Congress itself.

Sessions

Congress fixes the time for adjournment by agreement between the separate houses; but in case of disagreement between them on this point, the President may adjourn them to such time as he thinks proper. During the session of Congress neither house may, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses are sitting.

**Adjourn-
ment**

From April, 1789, to December, 1790, Congress met at New York, then the seat of government; from 1790 until 1800 at Philadelphia; and since 1800 at the national capitol at Washington. The Senate chamber occupies the north wing of the capitol building, the House chamber the south. The seats of members — revolving chairs with desks — are arranged in concentric rows facing the chair of the presiding officer on a raised marble dais at one end of the room. Around all four sides of both chambers are galleries, the House galleries seating 2500 people, those of the Senate 1200.

Place of meeting **335. Internal Organization of Congress.** The constitution makes each house the sole judge of the elections, returns, and qualifications of its members. Contested elections are referred to a committee on elections, which considers the evidence in each case, and submits a report. Inasmuch as a majority of the members of the committee on elections are chosen from the dominant party, a contested election is quite likely to be decided on partisan lines. Persons may be excluded from membership if the election has been irregular or corrupt; if improper returns have been made; if the constitutional qualifications are lacking; or for other reasons which in the opinion of the house render individuals unfit to act as members.

Elections, returns, and qualifications of members The presiding officer of the House of Representatives is the Speaker, chosen from the members by the House itself; while in the Senate the *ex officio* presiding officer is the Vice-President of the United States. Other officers elected by the respective houses ¹ from persons not members are: the clerk (in the Senate called the secretary), the sergeant-at-arms, doorkeeper, postmaster, and chaplain.²

Officers Each house of Congress may determine its own rules of procedure, punish members for disorderly behavior, and

¹ Nominally these officers are chosen by each house; but in practice the choice is made by the caucus of the majority party, held a few days before the organization of the house.

² Nominally these officers appoint their own assistants; but in practice the subordinate positions constitute patronage to be distributed by the leaders of the dominant party.

by a two-thirds vote, expel a member.¹ Acts of violence or abusive language may be punished by a vote of censure; or the offending member may be required to make a public apology to the house. Only grave offenses which show unfitness for the public trust and duty of a member are punished by expulsion.

Rules of
procedure

The constitution requires that "each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house shall, at the desire of one fifth of those present, be entered upon the journal."² The object of keeping a journal is to secure a permanent record of legislative action, as well as publicity of proceedings.

Journal

The object of requiring the call of yeas and nays is to fix upon each member responsibility for his vote by making it a matter of public record. Since the roll-call consumes considerable time, it ought not to be required for unimportant motions, as a motion to adjourn; hence the restriction that at least one fifth of the members present must demand the vote by yeas and nays.

Yeas and
nays

An official account of congressional debates and proceedings is published, known as the Congressional Record. This appears daily during the session of Congress, and is supposed to be a verbatim report of what is said in each house; but members are allowed to revise their remarks before they are printed, and in the House many of the published speeches are not actually made at all — since members often merely prepare their speeches and obtain "leave to print."

Congres-
sional
Record

336. The Quorum. A quorum of a legislative body is the number of members who must be present in order to transact business; and the quorum required by the constitution is a majority of each house.³ A smaller number than a quorum has power only to

What con-
stitutes a
quorum

¹ *Constitution*, Art. I, Sec. 5, Par. 2.

² *Ibid.*, Art. I, Sec. 5, Par. 3. — The Journal is an official record of the introduction of bills and the votes of members.

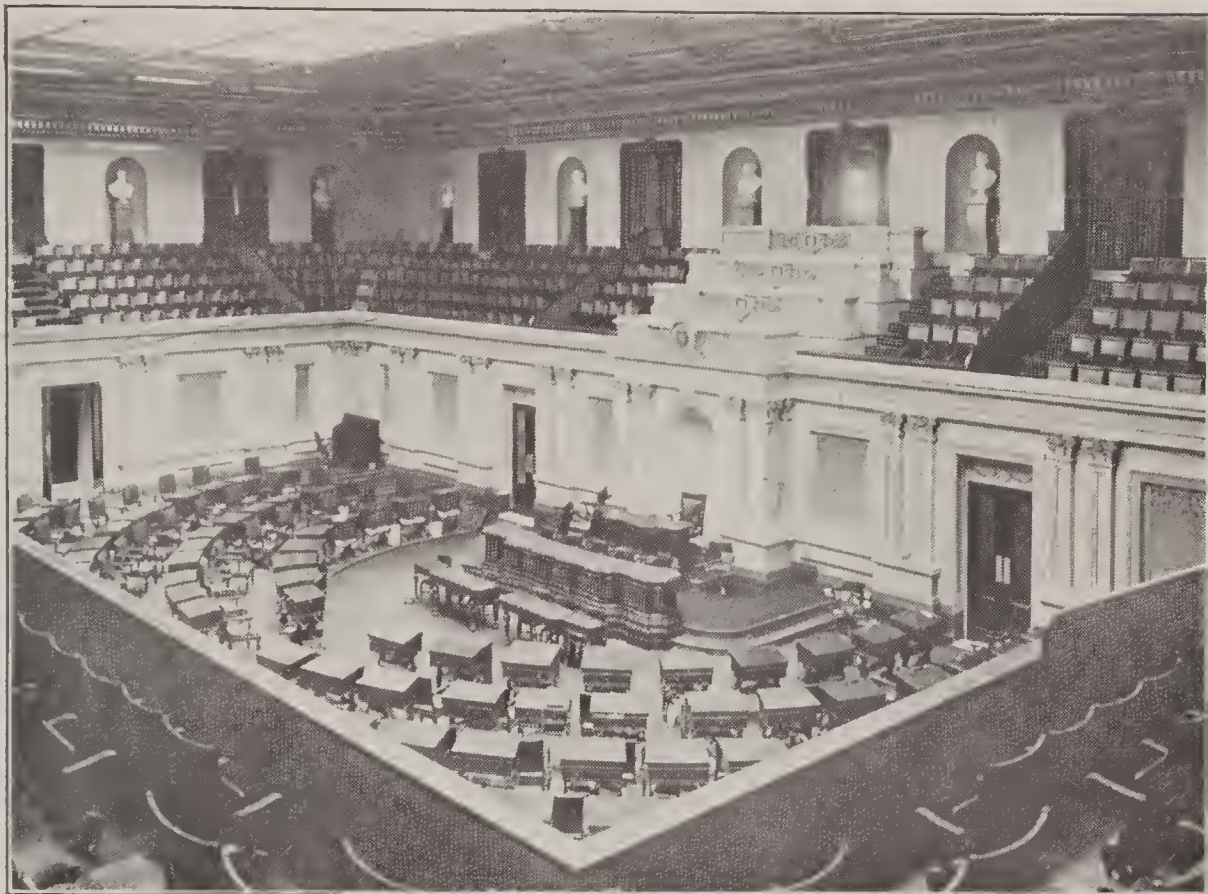
³ When the house is once organized, the quorum consists of a majority of those members chosen, sworn, and living, whose membership has not been vacated by resignation or by the action of the house.

adjourn from day to day; but they may compel the attendance of absentees by sending out the sergeant-at-arms with instructions to bring in members wherever found.

An interesting question arises as to whether in counting a quorum members are to be considered present who are actually in the house, but who do not answer to their names when the roll is called. For many years it was customary for members of the minority party to remain silent at roll-call, so that if several members of the majority party were absent, no quorum would appear. Speaker Reed in 1890 commenced the practice of counting members present whom he saw actually in the House, whether voting or not; and the House afterwards sanctioned his action by adopting the rule that the clerk shall note and record in the journal the names of members present but not voting; and that these names, together with those of members voting, are to be counted and announced in determining the presence of a quorum. This rule constitutes one of the most effectual checks upon "filibustering" — that is, upon obstruction tactics on the part of the minority.

337. Presiding Officer of the Senate. The presiding officer of the Senate is the Vice-President of the United States, the Senate itself choosing a president *pro tempore*, who occupies the chair during the absence of the Vice-President, or in case the latter succeeds to the Presidency. Unlike the Speaker of the House, the President of the Senate exercises no special control over legislation, but resembles the Speaker of the British House of Commons in acting simply as a chairman or moderator. He does not appoint the Senate committees, these being elected by the Senate itself; and he has no vote except in case of a tie. Questions of order are decided by him without debate, subject to appeal to the Senate.

338. The Speaker of the House of Representatives. The position of the Speaker of the House of Representatives is entirely different. He is a political leader rather than a chairman or moderator, and is expected to use his office for party purposes. Moreover, the House has seen fit to concentrate large powers of control in



UNITED STATES SENATE CHAMBER



UNITED STATES HALL OF REPRESENTATIVES

the hands of its Speaker, until to-day his position is second in political importance to that of the President alone.

The House chooses its Speaker out of its own membership, and in earlier years exciting contests occurred in the House over the election.¹ But with the development of the caucus system the real contest has been transferred to the caucus of the majority party, held shortly before the organization of the House. The candidate chosen by this caucus almost invariably receives the solid vote of his party in the House; for the rule of the caucus is that those who participate in its proceedings must support its decisions.²

As chairman of the House, the Speaker performs the customary duties of a presiding officer. He opens and closes the sittings of the House; maintains order; decides questions of parliamentary law; acts as the official representative of the House in its collective capacity; authenticates official proceedings by his signature; announces the order of business; states the question; and announces the vote. He also appoints the chairman of the committee of the whole, and may appoint a speaker *pro tem* for a period not exceeding ten days. The Speaker retains his privileges as a member, including the right to take part in debate (in which case he calls some member to the chair); and also the right to vote.

339. Chief Sources of the Speaker's Power. In addition to the above duties, the Speaker has three powers of such great importance as to give him virtual control of legislative policy during the period of his speakership.

(1) The Speaker has the right to appoint all standing

¹ In 1839 it took over a week to elect Speaker Hunter. In 1849, after a contest lasting three weeks, the House agreed that a plurality should elect, and Howell Cobb was chosen on the sixty-third ballot. In 1855, after a struggle lasting two months, Nathaniel P. Banks was elected by a plurality vote on the one hundred and thirty-third ballot. In 1859 the contest again lasted two months, finally resulting in the choice of William Pennington.

² The minority party also nominates a candidate in its caucus; he is regarded as the leader of the opposition, and is generally consulted by the Speaker in regard to the minority's representation upon committees.

and special committees of the House (except the committee on rules), and to designate their respective chairmen.¹ Since these committees have almost entire control over legislation, this power of appointment gives the Speaker tremendous influence upon law-making. In forming the committees, the Speaker appoints members who are favorable to his own views, and who can be relied upon to promote the party policy. Nor does the Speaker's power cease with the appointment of the committees; for he determines to which one each bill shall be referred. If the measure might be appropriately referred to either of two committees, he may determine its fate by sending it to the one which is friendly or hostile, according to his personal inclinations.²

(2) The second great source of the Speaker's authority is his power of recognition — that is, of deciding which member is entitled to the floor; for no motion or speech can be made except by one who has been duly recognized by the chair. While there are certain unwritten laws of recognition, and certain restrictions imposed by custom, the Speaker has the power to recognize only such persons as he pleases; and accordingly he may see or refuse to see, as he thinks the public interest requires, or as party interests may dictate. When a member rises and addresses the chair, he is frequently asked, "For what purpose?" and the Speaker then decides whether he shall be recognized. When a bill is before the House for consideration, the Speaker generally has a list of members (arranged beforehand by the committee chairman) who are to be recognized when the proper time comes; and discussion is thus confined to members whose names are on the Speaker's memorandum.³

¹ In the Senate, as in most European assemblies, the committees are chosen by the entire body.

² His decision in the matter of referring bills is subject to correction by the House — a right seldom used.

³ "The Speaker's power over recognition seems tyrannical to the last degree, and the first tendency of every one is to cry out against it; but the fundamental reason of its ac-

(3) The third source of the Speaker's authority is his right to decide points of order, including power to deal with obstruction — that is, filibustering tactics on the part of the minority. The obstructive devices formerly resorted to by the minority included preventing a quorum by refusing to vote, and delaying action by offering dilatory motions (as to take a recess, or to fix a day to which the House shall adjourn). In the Fifty-first Congress, Speaker Reed inaugurated the existing practice of counting as present persons actually in the House, whether they respond to their names at roll-call or not; and he also disregarded all motions and appeals made simply for the purpose of delay — a practice now invariably followed.

Decides
points of
order

To the imperfect organization of the House, its lack of leadership, and the immense amount of business presented for its consideration, is due the centralization of power in the hands of its Speaker. With thousands of measures presented for consideration by an unwieldy body of nearly four hundred members, it is essential to efficient action that some person be vested with large powers of control. Hence the Speaker, representing the political majority, has been entrusted with his large authority.¹

Reason for
centraliza-
tion of
power

In the exercise of his powers the Speaker does not act for himself alone, but rather as the organ of his party. It is through him that the party majority achieves results, suppressing those who would obstruct or prevent action by the House. This same majority can at any time check or limit his powers, or even depose him and elect another Speaker. Wide as are his powers, they are limited by the federal constitution and laws, by the rules of the House, by the precedents and practices of previous Speakers, and by general parliamentary usages.

Limitations
upon
Speaker's
power

340. The Committee on Rules. Until March, 1910, a

ceptance is that something must be done to unify legislation, that some one must be allowed to choose if anything is to be done." — Follett, M. P., *The Speaker of the House of Representatives*, p. 305.

¹ "The theory of the House is still that it is an assembly of equal factors, but the fact is that it is a hierarchy of private members, chairmen of committees, members of the committee on rules, and above them all a Speaker." — Follett, M. P., *The Speaker of the House of Representatives*, p. 309.

large part of the Speaker's power came from his control of the influential committee on rules. The rules committee **Authority** is virtually a committee of control, with power to decide upon the order for considering bills, to determine the length of debates, and the time when the vote shall be taken. This is done by "reporting a rule" — that is, by presenting a report as to the time and conditions under which the House shall consider a measure — a report which takes precedence over any other business. Accordingly the committee on rules can accept or reject a bill, permit or limit or refuse debate, admit or decline to admit an amendment.

Until 1910 this committee consisted of the Speaker and two majority and two minority members named by himself. In the **Present or-** Sixty-first Congress, those opposed to Speaker Can-
ganization non's policy finally succeeded in depriving him of a portion of his powers by a change in the composition of this committee. On March 19, 1910, the Democrats, aided by "insurgent" Republicans, passed a resolution providing that the committee on rules should thereafter consist of ten members — six of the majority and four of the minority party, the Speaker being excluded from membership. It was further resolved that this committee should be elected by the House, instead of being appointed by the Speaker. It is expected that this change will make the committee on rules more representative of the will of the majority of the House, and that the Speaker's powers over legislation will be somewhat decreased.

341. Congressional Committees. Large representative assemblies are confronted with the difficult problem of giving careful consideration to an immense number of measures, and at the same time acting promptly and efficiently. Two plans have been evolved for meeting this difficulty. The first is the cabinet or ministerial system, under which the leaders of the majority party in the legislature — who for the time being also hold the chief positions in the cabinet — prepare legislative measures, and defend them in the assembly against the attacks of the minority party. The cabinet virtually constitutes a central or ruling committee of the legislature, and retains control of the administration so long as it has the support of a majority of the members of the house. When

no longer able to command a majority, the cabinet must resign, and a group of leaders from the opposition in turn becomes the governing committee. This is the British system, also followed in many countries of continental Europe.

The second plan is the congressional or committee system, which prevails in our federal and State legislatures. Under this system the assembly is divided into a number of smaller groups or committees, each of which is charged with the consideration of legislation pertaining to a certain subject. After being considered by these miniature legislatures, measures are reported to the assembly itself for final action. The decision of a committee with reference to a bill is practically final, for while either house may overrule the committee, in practice this is seldom done. Hence it is said that our legislation is by committees and not by the house, for as a rule the house merely ratifies the decisions of the committees.

Congres-
sional or
committee
system

Commencing with a few committees in each branch, the number has increased until in the Sixty-first Congress the Senate had 72 and the House 62 committees. In size these vary from three to twenty members, the average membership being about eleven in the Senate and fifteen in the House. Every member of the House serves on at least one committee, and all Senators serve upon two or more. House committees are appointed by the Speaker, Senate committees elected nominally by the Senate, but in practice by the caucus of the majority and minority parties. The minority party is given such representation upon committees as the majority sees fit to allow — their representation being sometimes proportioned to the total minority membership.

Develop-
ment of
committee
system

All of the more important committees have rooms assigned them in or near the capitol, and meetings are held at certain hours on specified mornings. It is in these committee-rooms that most of the real work of legislation is performed. The committees confer with administrative officials, listen to persons interested in proposed measures, summon and examine witnesses, and sift carefully the mass of measures referred to them for consideration.¹ Committee sessions

Committee
sessions

¹ An immense volume of legislation is considered by the committees, the number of bills referred now exceeding 20,000 for each Congress. Of these only about one twentieth are

are commonly secret, although open to members of Congress; but considerable publicity is secured through public hearings, and the printing of committee reports.

The advantages of the committee system are: (1) It affords a convenient means of eliminating worthless bills without taking up the time of the house. (2) It enables Congress to dispatch an immense volume of business by subdividing the field of legislation. (3) It promotes specialization of legislative work, since members may be placed on committees for which their previous training has especially fitted them. (4) It enables Congress through its administrative committees to scrutinize the work of the executive departments. (5) It offers a suitable means of coöperation between the executive and legislative departments.

The defects of the committee system have been summarized by Bryce ¹ as follows: (1) It destroys the unity of the house as a legislative body. (2) It prevents the capacity of the best members from being brought to bear upon any one piece of legislation, however important. (3) It cramps debate and deprives the country of the light on public affairs which debates in Congress ought to supply. (4) It lessens the cohesion and harmony of legislation, since laws proposed by fifty different groups without any common oversight or control are almost certain to be inconsistent and contradictory. (5) It gives facilities for the exercise of underhanded and even corrupt influence. (6) It reduces responsibility. (7) It lowers the interest of the nation in the proceedings of Congress. (8) It throws power unaccompanied by adequate responsibility into the hands of the chairmen of committees, especially those dealing with finance and other great material interests.

342. The Process of Legislation. Every bill introduced in the House or Senate is read the first time by title only, and then referred by the presiding officer to the proper committee. The fate of the bill then rests with the committee; and "not having been discussed, much less affirmed in principle by the House, a bill comes before its committee with no presumption in its favor, but rather as a shivering ghost stands before Minos

enacted into law. At a single session, over 1000 bills are sometimes referred to one of the more important committees.

¹ *The American Commonwealth*, I, 159-162.

in the nether world.”¹ The committee may amend the bill as it pleases; or if unfavorable to the measure, may report it adversely, or too late for legislative action, or fail to report it at all.² If a bill receives the approval of the committee, it is reported back to the House or Senate with a recommendation that it be passed. It is then read a second time in full, and is placed upon the calendar — “the cemetery of legislative hopes” — along with hundreds of other bills. Here it must ordinarily await its turn, unless the committee on rules sees fit to direct immediate consideration. If a bill reaches the third reading, it is read by title only unless a reading in full is demanded, and the question is then put whether the bill shall pass.

In the House, debate is limited in several ways: (1) No member may occupy more than one hour in debate on any question, except the member in charge of the bill, who may have an additional hour at the close. (2) In the committee of the whole, speeches are limited to five minutes on each question.³ (3) No member except the one who has introduced the bill may speak more than once on the subject without special permission from the House. (4) Before the debate begins, the chairman of the committee in charge of the bill, in consultation with the Speaker, arranges a list of members who are to be heard for and against the measure; and no others will be recognized by the Speaker — control of debate being thus placed in the hands of the Speaker and his lieutenants, the committee chairmen. (5) It is customary for the member in charge of the bill, after a limited discussion, to move the previous question, a motion which cuts off debate and brings the House to a direct vote upon the question.

Debate in
the House

In the Senate, debate is unlimited, and the absence of a closure rule makes it possible for Senators to defeat a measure by talking indefinitely upon the subject. Although this privilege of unlimited discussion is sometimes abused, the Senate has repeatedly refused to adopt a rule cutting off debate. It proceeds upon the theory that if hasty and ill-con-

Debate in
the Senate

¹ Bryce, James, *The American Commonwealth*, I, 157.

² The House may discharge a committee from further consideration of a bill and take it up directly, but this is rarely done.

³ “The committee of the whole forms a convenient body for discussion and provisional voting on measures. In it, 100 constitute a quorum, and the Speaker’s chair is taken by some other member. Measures approved in it are reported to the House for formal adoption.” — Beard, C. A., *American Government and Politics*, p. 274, note 1.

sidered legislation is to be prevented, entire freedom of discussion must be allowed.

Votes in Congress are taken in one of four ways: (1) By *viva voce* vote, in which case the presiding officer calls in turn for the "ayes and noes," and decides by the volume of sound whether the motion has been carried or lost. (2) By a standing vote, whereupon those for and against the motion rise in succession and are counted by tellers. (3) By passing between tellers in front of the Speaker's desk. (4) By roll-call, or vote by yeas and nays. In this case the clerk calls the roll and each member as his name is reached answers "aye" or "no," the vote being then recorded in the journal.

If a bill receives a majority vote in one house, it is engrossed and submitted to the other, where the same process is repeated. Either house may amend any measure proposed by the other; but in case of amendment, however trivial, the bill must be returned to the house in which it originated. In the event of failure to agree upon an important measure, it is customary for each branch to appoint members of a conference committee which endeavors to adjust the differences. The report of this committee is generally a compromise between the opposing views. If the conference report is passed by both branches, an enrolled copy is prepared and signed by each presiding officer; and the bill is then ready to be submitted to the President.

343. Relations of Congress to the President. If the President approves the measure and affixes his signature, it thereupon becomes law. Otherwise he may veto the act, that is, return it to the house in which it originated, with a written statement of his objections. The objections are entered at large upon the journal of the house, whereupon the measure cannot become law unless upon reconsideration it receives a two-thirds vote of each house.

In addition to the exercise of his veto power, the President may influence the action of Congress in the following ways: (1) by his annual message to Congress; (2) by calling a special session of Congress and urging certain legislative measures; (3) by contact and communication through the executive departments with the congressional committees and their chairmen; (4) by the distribution of executive patronage.

Executive
influence
upon
Congress

On the other hand, Congress may bring its influence to bear upon the President in several ways: (1) By resolution, calling upon the President or an executive department to adopt a certain course, or censuring a course already taken, or requesting the submission to Congress of papers and information upon which the executive department has based its action. (2) By an investigating committee, appointed to inquire into the management of an executive department. (3) By refusing legislation recommended by the President, in order to embarrass his administration. (4) By withholding an appropriation necessary to carry out an executive policy. (5) By the use of a rider¹ to an appropriation bill. (6) By passing measures restricting the scope of executive powers; for example, requiring the President or his secretaries to do or refrain from doing something formerly left to their discretion. (7) By impeachment, "the heaviest piece of artillery in the congressional arsenal."

Congres-
sional influ-
ence upon
the Pre-
sident

344. Limitations on the Legislative Powers of Congress. Since the government of the United States is one of delegated powers, it follows that the legislative authority of Congress is derived from the federal constitution and restricted by its terms. The power to legislate must be granted by the constitution either in express terms or by necessary implication; or the power must be one which is necessary and proper to carry into effect powers therein granted.

General
limitation

¹ "A 'rider' is an unrelated piece of legislation attached to another legislative measure with the purpose of having it ride through on the merits of the measure to which it is attached." — Woodburn, J. A., *The American Republic and its Government*, p. 307.

Further, an act of Congress must not violate any of the restrictions expressly imposed upon Congress by the federal constitution. These are found mainly in the first ten amendments, and also in Section 9 of Article I. The first ten amendments constitute a federal bill of rights, designed to secure personal and political rights (freedom of speech, trial by jury, and the like) from invasion on the part of the federal government.¹ The principal legislative powers withheld from Congress by Section 9 of Article I, are as follows: —

**Specific
limitations**

No bill of attainder or *ex post facto* law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States.

345. Classification of Congressional Powers. The powers granted to Congress by the federal constitution may be classified under two heads: (1) express powers, or those specifically enumerated in the constitution; (2) implied powers, or those which are incident to express powers and necessary to their execution.

346. Express Powers of Congress. The powers expressly granted to Congress are enumerated in Section 8 of Article I, and in Section 3 of Article IV, and are as follows: —

(1) To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States.

¹ See Section 284.

- (2) To borrow money on the credit of the United States.
- (3) To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.
- (4) To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.
- (5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.
- (6) To provide for the punishment of counterfeiting the securities and current coin of the United States.
- (7) To establish post offices and post roads.
- (8) To promote the progress of science and useful arts by granting copyrights and patents.
- (9) To constitute tribunals inferior to the Supreme Court.
- (10) To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.
- (11) To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.
- (12) To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.
- (13) To provide and maintain a navy.
- (14) To make rules for the government and regulation of the land and naval forces.
- (15) To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.
- (16) To provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States.
- (17) To exercise exclusive legislative authority over the District of Columbia — the seat of government of the United States; and to exercise similar authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other public buildings.
- (18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.
- (19) To dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States.
- (20) To admit new States into the Union.

347. **Implied Powers.** We have seen that Congress is expressly authorized to make all laws “necessary and pro-

per” for carrying out the powers granted by the federal constitution. This clause is the foundation of the doctrine of implied powers. While the federal government is one of enumerated powers, it is not limited to powers expressly granted by the constitution, but may exercise others which are properly incident to express powers, and necessary to their execution.¹

It would be impossible to enumerate all the classes of statutes enacted by Congress in the exercise of its implied powers, but a few illustrations will show the practical working of the principle. For example, “the money powers of the federal legislature are held to give it the right to issue bonds and establish a system of national banks. Its power to regulate commerce invests it with authority to improve rivers and harbors, to maintain a coast survey, life-saving stations, and a naval observatory, to regulate the liabilities of ocean carriers and the charges of railroads, and to protect commerce against unlawful restraints and monopolies, and illegal combinations and trusts. Its power to lay and collect taxes furnishes the authority for the establishment and maintenance of the whole elaborate system for the collection of the customs duties, and internal revenue. Its authority to establish post offices and post roads includes the power to secure the passage of the mails from all obstructions or interruptions, to punish offenses against the postal laws, to exclude lottery advertisements and indecent matter from the mails, and to grant to telegraph companies a right of way over the public domain. Wherever Congress advances to fill the sphere of legislative jurisdiction confided to it by the great grants of the constitution, there advances with it the right and power to choose the means by which its laws shall be made effectual, and which are appropriate to the ends it is designed to accomplish.”²

¹ For Chief-Justice Marshall’s statement of the doctrine of implied powers, see Section 299.

² Black, H. C., *Constitutional Law*, p. 237.



(By courtesy of the Superintendent of the United States Capitol and Grounds)

THE NEW OFFICE BUILDING OF THE UNITED STATES SENATE

There is a similar building for the House of Representatives.



(By courtesy of Foster and Reynolds, New York)

THE EXECUTIVE OFFICES

Connected with the White House by a portico.

Sixty-first Congress of the United States of America:

At the First Session,

Began and held at the City of Washington on Monday, the fifteenth day of September, one thousand nine hundred and nine.

AN ACT

To amend an Act entitled "An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April twelfth, nineteen hundred.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April twelfth, nineteen hundred, is hereby amended by inserting at the end of section thirty-one of said Act the following additional proviso:

"*And provided further,* That if at the termination of any fiscal year the appropriations necessary for the support of government for the ensuing fiscal year shall not have been made an amount equal to the sums appropriated in the last appropriation bills for such purpose shall be deemed to be appropriated; and until the legislature shall act in such behalf the treasurer may, with the advice of the governor, make the payments necessary for the purposes aforesaid."

Sec. 2. That all reports required by law to be made by the governor or members of the executive council of Porto Rico to any official in the United States shall hereafter be made to an executive department of the Government of the United States to be designated by the President; and the President is hereby authorized to place all matters pertaining to the government of Porto Rico in the jurisdiction of such department.

Approved,

Speaker of the House of Representatives

Montgomery

Speaker of the House of Representatives

President

Vice-President of the United States

President of the United States

GENERAL REFERENCES

- Beard, C. A., *American Government and Politics* (1910), chs. XII-XIV.
 ——— *Readings in American Government and Politics* (1910), ch. XIV.
 Benton, T. H., *Thirty Years' View* (1854-56).
 Blaine, J. G., *Twenty Years of Congress* (1884).
 Bryce, James, *The American Commonwealth* (1907), I, chs. XV-XVI, XVIII-XX.
 Follett, M. P., *The Speaker of the House of Representatives* (1904).
 Ford, H. J., *The Rise and Growth of American Politics* (1898), ch. XIX.
 Fuller, H. B., *Speakers of the House* (1909).
 Hart, A. B., *Actual Government* (1903), ch. XIV.
 ——— *Practical Essays on American Government* (1905), nos. I, IX.
 Harrison, B., *This Country of Ours* (1903), chs. II-III.
 Kaye, P. L., *Readings on Civil Government* (1910), pp. 129-148.
 Kent, James, *Commentaries on American Law* (14th ed., 1896), I, lecture XI.
 Lodge, H. C., *Historical and Political Essays* (1898), pp. 169-197.
 Lowell, A. L., *Essays on Government* (1889), no. I.
 McConachie, L. G., *Congressional Committees* (1898).
 Moore, J. W., *The American Congress* (1895), ch. XXXIV.
 Reinsch, P. S., *American Legislatures and Legislative Methods* (1907), chs. I-III.
 ——— *Readings on American Federal Government* (1909), chs. VI, VII.
 Sherman, John, *Recollections* (1895).
 Story, J., *Commentaries on the Constitution of the United States* (5th ed., 1905), I, secs. 814-904.
 Woodburn, James A., *The American Republic and its Government* (1908), pp. 257-315.

QUESTIONS AND EXERCISES

1. What is the number of the present Congress? When does its term begin and end? When is the long session? The short session?
2. Give historical examples of important special sessions of Congress. What do you understand by the legislative calendar? The Congressional Record?
3. Which political party has control in each house? What majority has the dominant party?
4. Under our constitution each house has authority to decide questions concerning the election and qualifications of its members, while in the House of Commons disputed elections are referred to a judicial tribunal. Point out the advantages of each method.
5. To what extent may the federal government regulate elections to Congress?
6. Discuss the position and powers of the Speaker of the House of Representatives, especially his powers (a) of recognition, (b) of appointing committees, and (c) of referring bills to committees.
7. Contrast the position of the Speaker of the House with that of the President of the Senate.
8. Who is the Speaker of the present House? From what State does he come? Are Speakers frequently reelected? What Speaker served longest in this position?

9. Write an account of the struggle in the Sixty-first Congress to limit the powers of the Speaker.
10. Summarize the advantages and defects of the committee system of legislation.
11. Name the most important committees of each branch of Congress, and their chairmen. (See the latest Congressional Directory.)
12. On which committees is your Representative? Committee positions of your Senators?
13. What is meant by the committee of the whole? Describe the procedure in this committee.
14. Answer the same for conference committees.
15. Were any important measures referred to conference committees at the last session? Were any vetoed by the President?
16. Select a law which was passed at the last session of Congress, and learn when it was first introduced as a bill, to what committee it was referred, when it was reported, how long debated and by whom, and the final vote upon it in the house where introduced. Follow it through the other house in the same way, and state when it was signed by the President.
17. What volumes would you examine in order to ascertain the law of Congress upon any subject?
18. Can a bill be carried through all its stages and become a law, all in one day?
19. When does an act of Congress take effect? How are federal statutes promulgated?
20. Contrast the rules of the Senate and House concerning debate.
21. Prepare a report upon the implied powers of Congress.
22. Give instances of laws passed by Congress in the exercise of each of the following: financial powers; commercial powers; military powers; territorial powers; power to define and punish crimes; power to regulate the election of presidential electors, Senators, and Representatives.
23. Prepare an outline showing (a) the principal subjects of federal legislation; (b) of State legislation; (c) of local legislation.
24. May a Congress bind a succeeding Congress?
25. May the President submit drafts of bills to Congress?
26. What do you understand by each of the following terms: the lobby; filibustering; log-rolling; party caucuses; strike bills; riders?
27. Describe the obstruction methods sometimes resorted to in Congress. Mention recent cases of filibustering in the Senate or House.

CHAPTER XXV

ORGANIZATION OF THE FEDERAL EXECUTIVE

348. Method of electing the President. Under the Articles of Confederation, there was no national executive, and this had proven one of the fatal defects of the Confederation government.¹ Hence in the Constitutional Convention of 1787, there was unanimity as to the need of an executive department. The method of election was the subject of prolonged debate, the proposed plans including election by direct vote of the people, by Congress, and by electors chosen in various ways.

Debates in
Constitu-
tional Con-
vention

Shortly before adjournment, the Convention decided that the choice of a President should be entrusted to electors chosen in such manner as the State legislatures direct.²

The arguments in favor of this method were that it would obviate the objections to both popular and congressional elections; and that it would entrust the selection to men qualified to exercise a wise choice, and capable of acting independently and deliberately. This expectation of an independent choice has not been realized in practice, since the electors in casting their votes do not exercise discretion, but merely register the will of their party as expressed through its nominating convention. In spite of its serious defects, this method of indirect election has at least two advantages: (1) no President can be chosen who does not have supporters in about half the States, thus decreasing the danger of a sectional choice;

Choice by
Electoral
College

¹ The presiding officer of Congress acted simply as a chairman, and was in no sense the executive head of the government.

² The origin of this plan is perhaps to be found in the provision of the Maryland constitution of 1776, under which State senators were chosen by electors who were themselves chosen by the people.

and (2) it lessens the temptation to perpetrate election frauds in States which have large pluralities in favor of one of the political parties.¹

349. Number and Choice of Electors. Each State has a number of presidential electors equal to the aggregate **Number of electors** number of Senators and Representatives to which it is entitled in Congress. Thus New York having thirty-seven Representatives and two Senators is entitled to thirty-nine electors; while Nevada with one Representative and two Senators has three electors.²

The manner of choosing electors is left to the State legislatures, which have tried three different methods: **Methods of choice** election by the legislature itself; popular election by single districts; and popular election by general ticket.

At first in a majority of commonwealths, electors were chosen by the State legislatures; but with the **Election by legislature** growth of democratic ideas this plan was gradually abandoned in favor of popular election, which now prevails in every State.³

Two different methods of popular election have been tried — the district and the general ticket systems. Under the district plan formerly used, each voter cast his **Election by popular vote** ballot for three electors — one for the district in which he lived and two for the State at large. Election by districts was gradually supplanted by the general ticket system, under which each voter casts his ballot for all the electors to which the State is entitled.⁴ Under

¹ Thus if the President had been chosen by direct popular vote in the year 1908, there would have been a temptation to increase, by fraudulent manipulation, the Republican plurality of 123,537 in Pennsylvania, or the Democratic plurality of 151,135 in Texas; but no amount of manipulation could give the Republicans more than thirty-four electoral votes in Pennsylvania, or the Democrats more than eighteen electoral votes in Texas.

² The total number of presidential electors is therefore equal to the entire number of Representatives plus the total number of Senators.

³ By 1832 the only State retaining election by the legislature was South Carolina, which adhered to this plan until 1868.

⁴ Maryland was the last State to give up the district system, which she abandoned after the election of 1832. Since then the district plan has not been used in any State except for two years in Michigan. In 1891 the party then dominant in the Michigan legislature, realizing that it could not carry the electoral vote of the State as a whole, adopted the district system in order to gain the electoral votes of some districts. The plan was successful in dividing Michigan's electoral vote in 1892, but the act was repealed the following year.

the general ticket plan (now universal throughout the Union), the ticket of one party is usually carried entire, since its supporters ordinarily vote for all the electors, whose sole function is to vote for the party's presidential candidate. This method concentrates the struggle in the doubtful States, especially in those which have large electoral votes.¹

350. Qualifications for Electors and Voters. The only constitutional qualification for electors is the negative one that they shall not hold any office of trust or profit under the United States. In practice the district electors must be residents of their respective districts.

The qualifications for voters in presidential elections are the same as those for voters for the more numerous branch of the State legislature. Generally the suffrage is bestowed upon all male citizens twenty-one years of age who have resided within the State a certain period — frequently one year.

351. Time of Choosing Electors. Congress is empowered by the constitution to appoint a day for choosing the electors, and this day is to be uniform throughout the United States. In 1845 Congress prescribed the Tuesday following the first Monday in November of each leap year.² The election held on this day is popularly called the presidential election, as it is in effect; but speaking strictly, no votes are given at all for President and Vice-President on that day, but only for certain electors. About two months later the electors who have been chosen meet, and by their votes elect the nominee of their party.

352. Meeting of the Electoral College. In each State the electors who have received a plurality of the popular vote assemble at the State capital on the second Monday in January following their election. Here they proceed to vote in distinct ballots for Pre-

Casting the
electoral
votes

¹ In 1884, Grover Cleveland secured all of New York's thirty-six electoral votes, although his plurality was only about one thousand out of a total of over one million votes cast in that State.

² Also in 1900, which was not a leap year.

sident and Vice-President, one of whom at least must not be an inhabitant of their own State. Three duplicate lists are then made giving the names of all persons voted for as President and Vice-President, respectively, and the number of votes for each. To each of these lists is attached a copy of the certificate of election signed by the governor of the State. The lists are then signed by all the electors, sealed, and certified as containing all the votes of the State for President and Vice-President. A special messenger—generally one of the electors—takes one of these lists to the President of the Senate at Washington; another list is sent by mail to the same officer; and the third is deposited with the United States district judge of the district in which the electors meet.

353. Counting the Electoral Vote. In accordance with the statute passed in 1887, the count of the electoral vote occurs on the second Wednesday in February following the meeting of the electors. Both houses of Congress assemble in the hall of the House of Representatives, whereupon the President of the Senate opens the certificates, and the count is begun. The vote of a majority of all the electors appointed is necessary to the choice of both President and Vice-President. Except in case of disputed returns, the count is a mere form, since the result is ordinarily known three months before.

354. The Disputed Election of 1876. The constitution simply provides that “the votes shall then be counted,”¹ apparently contemplating a mere enumeration. No method is established for deciding as to the admissibility of doubtful votes, and this omission led to serious difficulty in the disputed election of 1876. At the time of this election there were 369 electoral votes, the number necessary to a choice being 185. Tilden and Hendricks, the Democratic nominees, received 184 undisputed votes; while Hayes and Wheeler, the Republican candidates, received 163 votes which were not contested. Four commonwealths, Oregon, Florida, Louisiana, and South Carolina, with an aggregate of 22 electoral votes, sent in

Process

Double returns

¹ Constitution, Amendment XII.

double sets of returns, both the Democratic and Republican electors claiming to have been chosen.¹ As the Senate was Republican and the House of Representatives Democratic, it was evident that Congress would not readily agree upon a solution of the questions involved.

After bitter and protracted discussion, a measure was passed, creating an electoral commission to consist of fifteen members, including an equal number of Senators, Representatives, and justices of the Supreme Court. Disputed returns were to be referred to this commission, and its decisions were to be final unless reversed by vote of both houses. The commission voted on strictly partisan lines, and by a vote of eight to seven decided that the twenty-two electoral votes in dispute should be counted for the Republican candidates, who were thereby elected by a vote of 185 to 184. In order to prevent another complication of this kind, Congress passed the act of 1887, regulating in detail the counting of the electoral vote.²

The
Electoral
Commission

355. Election by the House of Representatives. The constitution requires for the election of President "a majority of the whole number of electors appointed." If no person has a majority, the House of Representatives, in accordance with the twelfth amendment, elects the President by ballot from among the three candidates having the highest number of electoral votes. The vote in the House is taken by States, the delegation from each commonwealth having one vote; and a majority of all the States is necessary for a choice.³ In case the House does not choose a President before the fourth of March, the newly-elected Vice-President becomes President.

356. Elections of 1800 and of 1824. Two elections, those of 1800, and of 1824, have been decided by the House. In the election of 1800 both Jefferson and Burr received the same number of electoral votes, 73. This was a majority of the whole number of votes (138), but the tie resulted from the fact that under the original provision of the constitution

Election
of 1800

¹ In Oregon one electoral vote, only, was in dispute.

² If but one return is received from any State, its vote cannot be rejected if regularly given by electors whose appointment has been duly certified by the governor. In case more than one return is received, if there has been a determination by a State authority or tribunal as to who are the legal electors, such determination is conclusive; if conflicting decisions are made by different tribunals, each claiming power to act, the vote of the State is rejected unless the two houses of Congress agree as to who are the legal electors. In case no such determination has been made by State authority, and one set of electors has been certified by the governor, the vote given by them is to be received unless both houses, acting separately, agree to reject; while if neither set of electors has a certificate, the vote is not to be counted unless both houses, acting separately, agree as to who are the legal electors.

³ In case of election by the House, members must be present from two thirds of the States.

the electors voted simply for two candidates, without designating separately their choice for President and Vice-President. After an exciting contest, Jefferson was elected on the thirty-sixth ballot. This contest led to the adoption of the twelfth amendment, which establishes the present method of election.

Again in 1824 the House was called upon to decide the contest. Of the electoral votes, Andrew Jackson had received 99,

Election of 1824 John Quincy Adams, 84, W. H. Crawford, 41, and Henry Clay, 37. No one having the necessary majority (131), the House proceeded to elect from the three highest candidates. On the first ballot Adams was chosen by the following vote: Adams, 13, Jackson, 7, Crawford, 4.

357. Changes in the Process of Election. Four elections were held under the original provision of the constitution, but the election of 1800 demonstrated the need of a separate ballot for President and Vice-President in order to remove the possibility that the candidate for Vice-President might defeat the candidate intended for President. Accordingly the twelfth amendment was proposed by Congress in December, 1803, and ratified by the legislatures of three fourths of the States in the following year. The principal points of difference between the original and the present methods are, that the electors now cast separate ballots for President and for Vice-President; and that when the election devolves upon the House, that body chooses from the three highest candidates, instead of from the five highest, as under the original clause.

The intention of the framers of the constitution was that the electors should act independently in selecting a President. But in the third election (1796), it was understood that the Federalist electors were to vote for Adams, and the Republican-Democratic electors for Jefferson; and since that time there has never been a case where an elector has voted contrary to the expectations of those who chose him. Candidates for President and Vice-President are now nominated by national conventions ¹ of the political parties (usually held in June or July), composed of delegates from each State (two from each congressional district and four from the State at large). After the nomination of candidates by the national convention, State or district conventions of each party nominate electors whose sole function if elected is to vote for the candidates previously nominated. No provision of the constitution is stronger than the unwritten law that a presidential elector is required to vote for his party candidate.

¹ See Chapter xxxvii.

Thus the judgment of the political party acting through its convention has been substituted for that of the individual electors. The letter of the constitution is followed, but not the spirit; for the President and Vice-President are in fact chosen by the people acting through the machinery of political parties; and the electors are merely a cog in the machine. By thus suppressing the discretion of the electors and making them mere registers of the popular will, the Presidency has been made a democratic and a representative institution.

358. The Inaugural Ceremony. The President-elect usually goes to Washington a short time before March 4, on which day the inaugural ceremony occurs. On the day of the inauguration, he is escorted by the committee in charge to the Executive Mansion or White House, and then accompanied by the outgoing President he proceeds to the capitol. The constitution requires that before entering upon his duties he shall take an oath to faithfully execute the office of President, and to preserve, protect, and defend the constitution. A platform is erected on the east front of the capitol, and here in the presence of immense throngs of people, the oath is administered by the chief justice of the United States.¹ The President then delivers an address outlining his proposed policies. This concludes the inaugural ceremony proper, after which the President returns to the White House and reviews a procession which is generally several hours in passing.

359. Presidential Term, Salary, and Qualifications. The original preference of the Constitutional Convention was for a single term of seven years, but this was finally changed to a term of four years, with no restriction as to reëligibility. The term commences on the fourth day of March of each quadrennial year succeeding March 4, 1789. Precedent and custom having almost the force of law have placed a limit upon the number of terms a President may serve. Washington served two terms, but declined to be considered for a third, thereby establishing a precedent which has since been followed. In 1880 an effort was made to nominate ex-President Grant

¹ This is merely a custom, not a law. The oath may be taken before any official entitled to administer oaths, and in case of the succession of a Vice-President, is ordinarily taken without special ceremony.

for a third term; but its failure served to strengthen the unwritten rule that no President is eligible for a third term.¹

The qualifications prescribed by the constitution for the Presidency relate to citizenship, residence, and age.

Qualifications Natural-born citizens,² who have resided in this country at least fourteen years, and have attained the age of thirty-five years, are eligible. The Vice-President must have the same qualifications.

The compensation of the President is fixed by Congress, but may not be increased or diminished during the existing presidential term. The first salary act passed in

Salary 1789 fixed the President's salary at \$25,000 a year; in 1873 this was changed to \$50,000, and in 1909 to the present salary, \$75,000. In addition, Congress pays certain expenses connected with the White House, and makes other allowances for expenses incidental to the presidential office.³ The annual salary of the Vice-President is \$12,000.

360. The Vice-President. In case of failure to elect a President, or of his death, resignation, inability to discharge his duties, or removal by impeachment, the office devolves upon the Vice-President. The ordinary function of the Vice-President is to preside over the deliberations of the Senate; but he is not a member of this body, and his influence upon the Senate is ordinarily slight, since he does not appoint its committees and has no vote except in case of a tie.

Functions The Vice-President is generally nominated not with reference to his fitness to succeed the President, but because of his "availability" — to help carry a

¹ Eight Presidents have been reelected as their own successors, namely: Washington, Jefferson, Madison, Monroe, Jackson, Lincoln, Grant, and McKinley; one President, Cleveland, was reelected after an intervening term; and Roosevelt was elected President after he had succeeded to the office upon the assassination of McKinley.

² The constitution restricts eligibility to "a natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution." The exception in this last clause was in favor of men of foreign birth (like Alexander Hamilton and James Wilson) who had performed splendid service during the Revolutionary period. It would have been ungracious to render such men ineligible to the presidential office; hence the exception, which of course is no longer of practical effect.

³ The total amount set apart for the use of the President in the appropriation bill of 1909 was \$329,420.

doubtful State, or to placate a defeated faction in the nominating convention. Yet five times in our history the succession has devolved upon the Vice-President. By the death of Harrison in 1841 and of Taylor in 1850, Tyler and Fillmore, respectively, became Presidents; and by the assassination of Lincoln in 1865, of Garfield in 1881, and of McKinley in 1901, Johnson, Arthur, and Roosevelt, respectively, succeeded to the Presidency.¹

361. Election of Vice-President by the Senate. The Vice-President is chosen by electors in exactly the same manner as the President; but if no person receives a majority of all the electoral votes for Vice-President, then in accordance with the constitution the Senate elects that officer from the two candidates having the highest number of electoral votes, a majority of the whole number of Senators being necessary to a choice. The Senators vote as individuals, each member having one vote.²

362. Statutory Presidential Succession. Congress is empowered to designate by law who shall succeed in case the offices of both President and Vice-President become vacant — a contingency which has never yet occurred.³ In 1886 Congress passed the present law, which, with later amendments, provides for succession by cabinet officers in the following order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce and Labor. In order that the succession may devolve upon a cabinet officer, he must have the constitutional qualifications prescribed for the Presidency.

¹ The succession of both Tyler and Johnson proved a serious disappointment to the party which had elected them. Each had been nominated because of his "availability" — to strengthen the ticket.

² Only once in our political history has the choice of Vice-President devolved upon the Senate. In the election of 1836, Richard M. Johnson received 147 electoral votes for Vice-President out of a total of 294, lacking one vote of the requisite majority. He was chosen by the Senate, the vote standing: Johnson, 33; Granger, 16.

³ The statute of 1792 provided that the President *pro tem* of the Senate should be next in succession, then the Speaker of the House, — a new presidential election to follow within two months.

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), secs. 326-336.
 Beard, C. A., *American Government and Politics* (1910), ch. ix.
 Black, H. C., *American Constitutional Law* (1897), pp. 89-97.
 Bryce, James, *The American Commonwealth* (1907), i, ch. v.
 Burgess, J. W., *Political Science and Comparative Constitutional Law* (1902), ii, pp. 216-247.
 Ford, H. J., *The Rise and Growth of American Politics* (1898), ch. xxii.
 Hamilton, Jay, and Madison, *The Federalist* (ed. by Lodge, 1904), nos. LXVII-LXXII.
 Harrison, Benjamin, *This Country of Ours* (1903), chs. iv-v.
 Hart, A. B., *Actual Government* (1903), ch. xv.
 ——— *Practical Essays on American Government* (1905), no. iii.
 Kaye, P. L., *Readings in Civil Government* (1910), pp. 184-196.
 Schouler, James, *Constitutional Studies* (1904), pp. 156-168.
 Stanwood, Edward, *History of the Presidency* (1904).
 Story, J., *Commentaries on the Constitution* (5th ed., 1905), i, secs. 1410-1488.
 Tucker, J. R., *Constitution of the United States* (1899), ii, pp. 693-714.
 Wilson, Woodrow, *The State* (1906), secs. 1324-1333.
 Woodburn, James A., *The American Republic and its Government* (1908), pp. 94-142.

QUESTIONS AND EXERCISES

1. Discuss the arguments of Hamilton and Madison in the Constitutional Convention as to the length of the presidential term.
2. Prepare a report upon the methods of presidential election proposed in the Constitutional Convention.
3. What method of electing the President do you consider best? Reasons?
4. How many members in the electoral college at present? How is this number fixed? What number of electoral votes is necessary to a choice?
5. How many electors has your State? Which political party generally carries your State in presidential elections?
6. What qualifications are required in your State to entitle one to vote for presidential electors?
7. What would be the advantages of having electors chosen by congressional districts with two at large for each State, instead of upon a general ticket?
8. Describe the process by which the Presidency has been made a representative, democratic institution (Section 376). In other words, the difference between the theory and the practice of presidential elections.
9. Who were the candidates at the last presidential election? How were they nominated? Who were the candidates for Vice-President?
10. Who were the delegates-at-large from your State and the delegates from your district at the last Republican and Democratic national conventions? How were they chosen?
11. What electoral vote was received by each of the two principal candidates at the last presidential election? What was the popular vote for each?
12. What was the previous public service of our President before his elec-

tion to the Presidency? Are successful governors often nominated for the Presidency?

13. Compare the chief planks of the two party platforms in the last presidential election. Has the successful party fulfilled the pledges of its platform?
14. Name the Presidents who received a minority of the popular vote.
15. Which States and which sections of the country have had the greatest number of Presidents?
16. Describe the presidential inauguration.
17. Discuss the former and present rule of presidential succession.
18. Prepare a report upon the presidential elections of 1800 and 1824.
19. Prepare a report upon the disputed election of 1876.

CHAPTER XXVI

THE PRESIDENT'S POWERS AND DUTIES

363. General Characteristics of the Federal Executive.

**Import-
ance of
Presidency** The federal constitution, like the State constitutions, establishes the executive department as an independent and coördinate branch of the government; but unlike the State constitutions, it vests executive power in a single individual — the President. Elected as the representative of the nation, and entrusted with large powers and corresponding responsibilities, the President is the most imposing as well as the most powerful factor in our national government. “A chief magistrate who wields the whole military and no inconsiderable share of the civil power of the state, who can incline the scale to war and forbid the return of peace, whose veto will stay the course of legislation, who is the source of the enormous patronage which is the main lever in the politics of the United States, exercises functions which are more truly regal than those of an English monarch.” ¹

**Executive
independ-
ence** Since the executive is an independent branch of the government, it follows that in the performance of his duties the President is subject to the control of no other department or body. “The grand theory of the constitution makes him a co-equal in the tri-partite organization. He draws his power from the same source as the national legislature and judiciary; he is answerable to neither; his discretion is as absolute as that of any legislator, and more so than that of any judge; no other branch of the government may rightfully interfere with him in the exercise of that discretion.” ² Hence it follows that the Pre-

¹ Hare, J. I. C., *American Constitutional Law*, I, 173.

² Pomeroy, J. N., *Constitutional Law of the United States*, sec. 631.

sident is privileged from the jurisdiction and process of any court. He cannot be arrested for any reason whatsoever, and is answerable for misconduct only before one tribunal — the Senate of the United States organized as a court of impeachment.

364. Classification of Executive Powers. The powers of the President are enumerated in Article II, Sections 2 and 3 of the constitution, and may be classified as follows: (1) military powers; (2) administrative powers; (3) diplomatic powers; (4) legislative powers; (5) judicial powers.

365. Military Powers of the President. The President's military powers arise (1) by virtue of his position as commander-in-chief; (2) from his general duty to enforce the laws; and (3) from the federal guaranty to the State governments of protection against invasion or domestic violence.

366. Position as Commander-in-Chief. The constitution provides "that the President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into actual service of the United States."¹ By virtue of his position as commander-in-chief, the President regulates the disposition of the military and naval forces, both in time of peace and war; he appoints and dismisses all officers both of the army and navy; supervises the execution of the military law by which the army and navy are governed; calls out any part of the State militia when in his judgment such action is necessary to execute the laws of the Union, suppress insurrection, or repel invasion; and when war has been declared or when hostilities actually exist, he wages war as supreme commander. Not that the President is expected to take the field in person, but he has general charge of military movements. "In theory he plans all campaigns, establishes all blockades and sieges, directs all marches, fights all battles."²

¹ *Constitution*, Art. II, Sec. 2.

² Pomeroy, J. N., *Constitutional Law*, sec. 706.

In time of war the President's powers may so expand as to make him almost a dictator, as was practically the case with President Lincoln during the Civil War. **War powers practically unlimited** Without waiting for action by Congress, the President proclaimed a blockade of the Southern ports, called for 75,000 volunteers, and increased the regular army by 20,000 men. Later, by the exercise of his authority, the writ of *habeas corpus* was suspended; martial law was declared in many districts; arrests were made upon military warrant with trial before military courts; and provisional governments were established in hostile territory. Finally, — the crowning example of the President's absolute power in time of war, — the Emancipation Proclamation was issued (January 1, 1863), freeing the slaves in the States then in rebellion.

367. Duty to enforce the Laws. The exercise of the President's military powers may at any time result in consequence of his important and comprehensive **Methods of law enforcement** duty to "take care that the laws be faithfully executed."¹ Ordinarily the execution of the laws proceeds along peaceful lines and can be carried on through the civil administration. Individuals who violate federal laws are arrested by United States marshals or their deputies, and tried before the proper federal court. But in case resistance to federal law becomes so serious that the civil powers cannot cope with it, the President is authorized to employ the military arm of the government to restore order; and it is for him to determine when such necessity exists, and which branch of the military service — the militia or the regular army — shall be used.²

On several occasions in our history the President has found it necessary to use military force in order to execute

¹ *Constitution*, Art. II, Sec. 3.

² "We hold it to be an incontrovertible principle," declared the Supreme Court in *Ex parte Siebold*, "that the government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent." — 100 United States, 371; *Thayer's Cases*, I, 333.

the laws. In 1794 President Washington called out the militia from four States in order to suppress the so-called Whiskey Rebellion. The Civil War was of course the most notable instance when the Executive was obliged to resort to military force to execute the laws. Again, during the railway strikes of 1877 and 1894, mob violence interfered with the performance of certain functions of the national government, especially the transportation of the United States mails; and on both occasions regular troops were employed to overcome the resistance.

Employment
of military
force

368. **Protection of the States.** The constitution provides that "the United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence."¹ In order to give effect to this guaranty against domestic violence, Congress has authorized the President, on application of the State legislature or executive, to order out such numbers of the militia as he deems necessary to suppress the insurrection. It is for the President to decide whether the exigency exists upon which the federal government is bound to interfere.² In case of a conflict between rival State governments, it may devolve upon him to determine which is the rightful authority and to suppress the opposition.³

Federal in-
tervention

Under some circumstances the President need not await the application of the State authorities before intervening. For example, if domestic violence within a commonwealth violates federal law and interrupts the discharge of the functions of the national government, the President may act without awaiting the applica-

Intervention
to execute
federal laws

¹ *Constitution*, Art. IV, Sec. 4.

² *Luther v. Borden*, 7 How. 1; *Thayer's Cases*, I, 193.

³ Thus in the case of Dorr's rebellion in Rhode Island (1841-42), the President recognized the charter governor as the lawful executive and took steps toward calling out the militia to support his authority; and because of this action the rebellion collapsed. Again in 1873, a conflict between two rival governments in Louisiana was settled by federal troops.

tion of the State government. In such cases federal intervention is authorized under the clause of the constitution requiring the President to "take care that the laws be faithfully executed." ¹

369. Administrative Powers. The chief administrative function of the Executive is to carry into effect the laws passed by Congress. In discharging this duty the President is aided by a large number of executive officials, who are responsible to him as head of the administration. Most of these officers are appointed by the President either directly or through his immediate subordinates; and practically all of them, from cabinet officer down to federal marshal, may be removed by him. Thus the distinctive feature of the federal administration is the direct control exercised by the President through his power of appointment and removal. In sharp contrast with the State executive, the President is the actual as well as the nominal head of the administration.

370. The Power of Appointment. The President's power of appointment is conferred by the constitution in the following provision: "He shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments." ² The officers whose appointments are "otherwise provided for" are the President and Vice-President, the presidential electors, members of the Senate and House, and the several officers of these two houses. All

¹ A notable instance of intervention under these circumstances was President Cleveland's action during the great railway strike of 1894, when he ordered United States troops into Illinois to enforce the postal laws and the provisions of the Interstate Commerce Act.

² *Constitution*, Art. II, Sec. 2.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

This year of 1910 is drawing to a close. The records of population and harvests which are the index of progress show vigorous national growth and the health and prosperous well-being of our communities throughout this land and in our possessions beyond the seas. These blessings have not descended upon us in restricted measure, but overflow and abound. They are the blessings and bounty of God.

We continue to be at peace with the rest of the world. In all essential matters our relations with other peoples are harmonious, with an ever-growing reality of friendliness and depth of recognition of mutual dependence. It is especially to be noted that during the past year great progress has been achieved in the cause of arbitration and the peaceful settlement of international disputes.

Now, therefore, I, William Howard Taft, President of the United States of America, in accordance with the wise custom of the civil magistrate since the first settlements in this land and with the rule established from the foundation of this Government, do appoint Thursday, November 24, 1910, as a day of National Thanksgiving and Prayer, enjoining the people upon that day to meet in their churches for the praise of Almighty God and to return heartfelt thanks to Him for all His goodness and loving-kindness.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fifth day of
November, in the year of our Lord one thousand nine
hundred and ten and of the independence of the
United States the one hundred and thirty-fifth.

By the President:

Alvey A. Adee
Acting Secretary of State.

Wm. H. Taft

A PRESIDENTIAL PROCLAMATION

other officers of the United States are appointed either: (1) by the President subject to confirmation by the Senate; or (2) in the case of inferior officers, by the President alone, by the courts of law, or by the heads of departments.

371. Officers appointed by Concurrent Action of President and Senate. The class of officers appointed by the President with the advice and consent of the Senate is comparatively small (8000 out of 350,000 federal officials), but it comprises the most important officers of the government.¹ The customary process of appointment is for the President, after private conference with individual Senators from the States in which the appointees live,² to send to the Senate the names of the persons selected for certain offices. The Senate refers these nominations to the appropriate standing committee; and the committee confers with the Senators of the State from which the nominee comes (if of the same political party as the President) to ascertain whether there is objection to the appointment. A report is then made to the Senate either favorably or adversely to the nominee, and that body confirms or rejects the appointment. If the nomination is confirmed, the President on being notified issues a commission to the officer, thereby completing the appointment; while if the nominee is rejected, the President must make a second choice.

An exception to the usual process of appointment arises in case of vacancies which occur from death, removal, or resignation during the recess of the

Process in
making ap-
pointments

Recess ap-
pointments

¹ In this class are included all ambassadors, ministers, and consuls; all federal judges; most military and naval officers; cabinet officers and their immediate subordinates; the treasurer of the United States; the comptroller of the currency; superintendents of mints; commissioners of internal revenue; collectors of customs and internal revenue; interstate commerce commissioners; commissioners of patents; commissioner of pensions; pension agents; land agents; Indian agents; district attorneys and marshals; territorial governors; and postmasters of the first, second, and third classes (all whose salary is \$1000 or over).

² Provided those Senators are of the same political party as the President. In the case of minor appointments within a congressional district, the President ordinarily confers with the Representative from that district (if of the same political party as the President), and is more or less guided by his recommendation.

Senate. In such cases the President may make temporary appointments at his sole discretion; but such an appointment terminates at the end of the next session of the Senate, unless meantime confirmed by that body.

372. Appointment of Inferior Officers. Under the constitution, Congress is empowered to vest the appointment of inferior officers in the President alone, in the courts of law, or in the heads of departments. Accordingly the President appoints the clerks in his office, and indirectly (through his department heads) controls the appointment of many other officials; the judges appoint the clerks and reporters of their courts; and the cabinet officers appoint most of their subordinates. A large majority of these inferior federal offices are now filled in accordance with the rules of the civil service.

373. The Power of Removal. The general rule as to removals is that the President may at any time remove any officer in the federal service for reasons which he deems sufficient. Exceptions to this statement are the federal judges, who hold office during good behavior and can only be removed through impeachment; and military and naval officers, who in time of peace can only be removed through the decision of a court-martial.

The constitution is silent concerning the power of removal, but by legislative construction and executive practice the principle has become established that the President may remove officers without the consent of the Senate. Only once has there been a departure from this construction, — in the Tenure of Office Act of 1867. This measure in effect required the consent of the Senate to the removal of officers appointed by the concurrent action of the President and Senate. After being materially modified in 1869, this act was at length entirely repealed (1887), thereby re-affirming the principle that removal from office is an exclusive power of the Executive.

374. Term of Federal Officers. Most of the important officials in the executive service are appointed for four years, re-appointment not being customary. This class includes territorial judges and governors, marshals, and district attorneys, the chiefs of many bureaus, customs collectors, Indian agents, pension agents, and postmasters of the first three classes. Cabinet officers

¹ *The Federalist*, no. LXXVII.

are appointed without limit of term, and serve during the pleasure of the President. Subordinate officials under the classified civil service are also appointed for an indefinite term, holding office as long as they serve efficiently. This permanence of tenure for subordinate executive officials was only established after a long experience of the evils of the spoils system.

375. The Spoils System. During the first forty years of our national history, it was tacitly understood that subordinate executive officials should continue in office during good behavior. Since their duties were non-political, it was conceded that their tenure should depend upon faithful and efficient service, rather than upon party affiliation. But at the beginning of Jackson's first administration (1829), the so-called spoils system (first developed in New York and Pennsylvania) was introduced into national politics. The principle of the spoils system is that the offices belong to the victorious party, and are to be used as a reward for partisan services. This view was avowed in the Senate by Senator W. L. Marcy of New York in the now celebrated phrase, "To the victors belong the spoils of the enemy." Proceeding upon this theory, a system of political proscription was inaugurated (1829), and hundreds of office-holders were removed to make room for the friends of the administration. The Whig party condemned this system in theory, but likewise followed it in practice; and thus the spoils system became a permanent feature of American politics. Its demoralizing effects upon the public service continued unchecked until the administration of President Arthur (1883).

Introduction
and effects

376. Civil Service Reform. Finally, in 1883 public opinion compelled Congress to pass a Civil Service Act ¹ designed to make appointment to subordinate executive offices depend upon individual merit, rather than upon partisan service. This act created the United States Civil Service Commission, consisting of three persons (not more than two belonging to the same political party), appointed by the President with the consent of the Senate. Other important provisions are as follows: (1) It provides for open, competitive, practical examinations for all applicants for positions in the classified service. (2) These positions are to be filled by selection according to grade from among those applicants standing highest on the examinations, a period of probation to precede final appointment. (3) Appointments are to be apportioned among the several States

Civil
Service
Act of 1883

¹ Civil service denotes the executive branch of the government, as distinguished from legislative, judicial, military, and naval offices.

and territories according to population. (4) No appointee can be required to contribute to any political fund or to perform any political service. (5) No Senator or Representative is allowed to recommend any applicant to the examining board. (6) The appointing power is required to notify the commission of the selection of applicants from those recommended as a result of the examination; also of the rejection of applicants after probation, and of transfers, resignations, and removals.

The Civil Service Commission appoints a chief examiner and boards of examiners who conduct examinations not less than **Examination and promotions** twice each year at Washington, D. C., and in the various States and territories. These examinations are practical in character, having special reference to the nature of the work which the applicant is to perform. The commission has instituted a system of promotion from the lower to the higher grades of the public service, thus encouraging efficiency by enabling competent officials to advance to higher positions.

The number of officers included under the original act was about 14,000. Subsequent Presidents, especially Cleveland, Harrison, and Roosevelt, have greatly extended its **Extent of civil service** operation by executive orders; and in 1908 the entire number of classified offices was 206,637 (leaving 138,500 unclassified or excepted). The classified service now includes nearly all the clerks in Washington (the so-called departmental service); officials in the postal service, including letter-carriers and clerks in post offices and the railway mail service; together with employees in customs houses, in the revenue service, the government printing-office, and the Indian service.

The merit system of appointment has greatly improved the public service. It proceeds upon the theory that a public office **Advantages** is a public trust, not the political prize of a party victory. It makes appointment to such office depend upon merit and promotion upon efficiency, thus placing government service as nearly as possible upon a business basis. Undoubtedly it has defects, but it marks a great advance upon the proscription and demoralization that existed for over fifty years under the spoils system.

377. Diplomatic Powers. The President's diplomatic powers include: (1) the power to appoint ambassadors, ministers, consuls, and other commissioners to foreign countries; (2) the power to receive foreign ambassadors and representatives; (3) the power to make treaties by and

with the advice and consent of the Senate. Through the agency of our representatives abroad, the President has sole control of the ordinary intercourse between the United States and other nations; but his power to conclude treaties or formal compacts with other nations is shared by the Senate.

378. **Appointing and receiving Representatives.** The constitution provides that the President shall appoint all ambassadors, other public ministers, and consuls, subject to the consent of the Senate; but once appointed, these officers are under his sole control. Control of
foreign
intercourse

"They communicate alone with the Executive through the State Department. Instructions are sent to them, dispatches forwarded, demands made, claims insisted on, principles adopted and enforced, as the President deems proper."¹ The management of foreign affairs is entrusted to the Department of State, at the head of which is the Secretary of State, who acts under the direct personal control of the President.

The President's power to receive ambassadors and other public ministers is in most cases merely a ceremonial duty; but it may involve important consequences, since the President must exercise his discretion in receiving, or refusing to receive, the minister Receiving
foreign
represent-
atives from a state claiming to be independent, but whose independence has not been generally recognized. Moreover, he may refuse to receive a particular person in those exceptional cases where the foreign representative is personally objectionable (*persona non grata*) to our government. Should relations between the United States and a foreign power become seriously estranged, the President may dismiss the foreign minister, thus involving a suspension of diplomatic relations and the probability of war. The President's power of regulating foreign intercourse is a momentous one: he cannot declare war, but he can so conduct

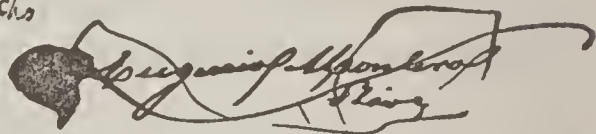
¹ Pomeroy, J. N., *Constitutional Law*, sec. 671.

foreign affairs as to incline the scale toward peace or war.¹

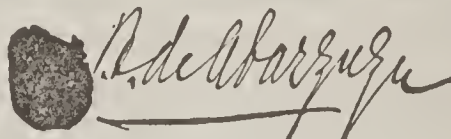
...into affixed our seals respectivos Plenipotenciarios
Done in Duplicate at firman y sellan este trata-
Paris, the tenth day of Decem. -do.

...ber, in the year of Our Lord Hecho por duplicado en Paris
one thousand eight hundred a diez de Diciembre del año
and ninety eight mil ochocientos noventa y
ochos

William R. Day

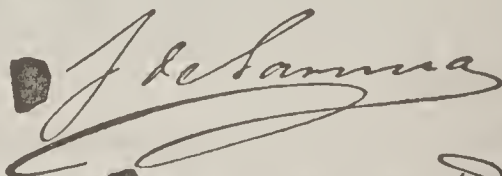


Cushman K. Davis

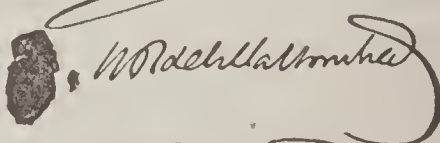


Mr. Frey

Geobray



Whiteland Reid



Rafael Cerero

LAST PAGE OF THE TREATY OF PARIS, 1898

Terminating the War with Spain

379. The Power to make Treaties. By the constitution the President is vested with the power to negotiate treaties and conventions with other countries. The negotiation of treaties is conducted by the President through the Department of State; but during the process of negotiation he generally consults with the Senate

Negotiation
and ratifica-
tion

¹ In 1846, before the outbreak of the Mexican War, President Polk ordered troops into the disputed territory, where they were attacked by the Mexicans; and Congress then declared that "war existed by the act of the Republic of Mexico." At a later date, President Cleveland's famous Venezuelan message seemed likely to involve this country in war with Great Britain.

committee on foreign relations, and with the leaders of the senatorial majority. After the treaty has been framed, it is submitted to the Senate, where it is discussed in executive or secret session. Ratification requires the affirmative vote of two thirds of the Senators present. If finally accepted by both nations, duplicate parchment copies signed by the accredited representatives are exchanged; and the President then publishes the treaty by means of a proclamation. By a provision of the federal constitution, treaties are made a part of the supreme law of the land; and hence any conflicting provision of a State law or constitution is thereby abrogated.¹

380. Legislative Powers. The powers of the President in legislation may be considered under three heads: (1) his power of convening and adjourning Congress upon extraordinary occasions; (2) his power to recommend desirable legislation; (3) his power to veto any measure passed by Congress.

381. Convening and adjourning Congress. Unforeseen contingencies may arise during the recess of Congress which imperatively require the assembling of that body; hence the constitution provides that the President may, "on extraordinary occasions, convene both houses or either of them."² A newly inaugurated President often calls an extra session of the Senate alone, to consider nominations to cabinet offices and other important positions; and in exceptional cases it may be necessary to convene the Senate in special session for the consideration of a treaty.

382. Power to recommend Legislation. The constitution enjoins upon the President the duty to "give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."³ Under Washington and

¹ Treaties and laws of Congress are of equal authority; and if there is a conflict between a statute and a treaty, the later law whether statute or treaty prevails; and the earlier one is, to the extent of the conflict, displaced.

² *Constitution*, Art. II, Sec. 3.

³ *Constitution*, Art. II, Sec. 3.

Adams, it was the practice for the President to deliver an oral address to the two houses assembled in joint convention. Jefferson inaugurated the present custom of sending to each house by a private secretary a written copy of the annual message.¹ This document generally discusses the important political questions of the day, points out defects in existing legislation, and suggests remedies. It is not customary for the President or his cabinet to prepare and present bills, although proposed measures are often submitted to him for comment, and are sometimes drawn in accordance with his suggestions. But with regard to most legislation, the President's initiative is limited to suggesting or outlining desirable policies; and for the adoption of his recommendations he relies upon private conference with members and committees, and upon personal influence with the party and committee leaders in each house.

383. The Presidential Veto. By far the most important of the President's legislative powers is his veto. Every bill, order, resolution, or vote to which the concurrence of the two houses is necessary (except a question of adjournment or a proposed constitutional amendment) must be presented to the President for his approval. **Modes of dealing with bills** When a bill is sent to the President, he may deal with it in one of four different ways. (1) He may sign it, whereupon it becomes a law — the usual course with most bills. (2) He may leave it unsigned, and at the end of ten days (Sundays excepted), it becomes a law without his signature. (3) He may veto the bill — that is, return it with his objections to the house in which it originated. The objections are then entered at large upon the journal, whereupon the bill can become a law only by being passed by a two-thirds vote of each house; and the vote in such cases must be by roll-call. (4) In case Congress adjourns before

¹ Special messages are also sent from time to time, as occasion requires, often accompanied by correspondence or reports which may aid Congress in its work.

the expiration of the ten days given to the President for the consideration of every bill, he may defeat the measure by refraining from signing it — this being an exercise of the so-called “pocket veto.”

The presidential veto is thus a limited or qualified one, operating as a salutary check on hasty or ill-advised legislation. Originally designed as a check upon unconstitutional measures, especially legislative encroachments upon the executive or judiciary, the veto power has been freely used in practice to defeat legislation deemed by the executive to be unwise or inexpedient.¹ Hence the principle is now well settled that the President is to use his independent judgment on every bill passed by Congress, “not sheltering himself under the representatives of the people, or foregoing his own opinion at their bidding.”

Theory of
the veto
power

The use of the veto power is restricted by the fact that the President must approve or reject the bill as a whole; he cannot, for example, veto particular items in an appropriation bill. Hence measures which otherwise could not receive the executive sanction are sometimes inserted as “riders” in appropriation bills, thereby compelling the Executive either to accept the obnoxious rider, or to incur the responsibility of defeating indispensable appropriations.

Riders

384. **Judicial Powers.** The President has power “to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.”² “A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed.”³ The lan-

Pardoning
power

¹ Throughout our national history the presidential veto has been exercised nearly 500 times. Down to Jackson's administration but seven bills were vetoed. Jackson vetoed 12 bills; Johnson, 21; Grant, 43; Cleveland during his first administration, 301 (nearly all of which were private pension or relief bills); McKinley, 14; and Roosevelt, 42. Out of the total of 500 bills vetoed, only about 30 were subsequently passed by Congress over the veto, and 15 of these were during Johnson's administration.

² *Constitution*, Art. II, Sec. 2.

³ *United States v. Wilson*, 7 Pet. 160.

guage conferring this power is general, and hence the pardon may be absolute or conditional; may be issued before or during the trial of the accused, or after conviction and sentence; and may be granted to one or a class of individuals. The President's power to pardon extends only to offenses against federal, not State laws; and he cannot pardon in case of impeachment.

A reprieve is simply the suspension of a sentence, deferring its execution without changing the substance of the punishment. **Reprieves**

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), secs. 337-351.
 Baldwin, S. E., *Modern Political Institutions* (1898), no. iv.
 Beard, C. A., *American Government and Politics* (1910), ch. x.
 ——— *Readings in American Government and Politics* (1910), ch. x.
 Black, H. C., *American Constitutional Law* (1897), pp. 97-122.
 Bryce, James, *The American Commonwealth* (1907), i, ch. vi.
 Burgess, J. W., *Political Science and Comparative Constitutional Law* (1902), ii, pp. 248-263.
 Cooley, Thomas M., *Constitutional Law* (1898), ch. v.
 Fairlie, J. A., *National Administration of the United States* (1905), chs. i-ii.
 Fish, C. R., *The Civil Service and the Patronage* (1905).
 Hamilton, Jay, and Madison, *The Federalist* (ed. by Lodge, 1904), nos. LXXIII-LXXVII.
 Harrison, Benjamin, *This Country of Ours* (1903), chs. vi-x.
 Mason, E. C., *The Veto Power* (1890).
 McClain, E., *Constitutional Law* (1905), chs. xix-xxiii.
 Pomeroy, J. N., *Constitutional Law* (10th ed., 1888), secs. 628-714.
 Reinsch, P. S., *Readings on American Federal Government* (1909), chs. i-iii, xiii.
 Story, J., *Commentaries on the Constitution* (5th ed., 1905), i, secs. 1489-1572.
 Tucker, J. R., *Constitution of the United States* (1899), ii, pp. 715-752.
 United States Civil Service Commission, *Twenty-seventh Annual Report for year ending June 30, 1910*.
 Wilson, Woodrow, *Constitutional Government in the United States* (1908), ch. iii.
 Woodburn, James A., *The American Republic and its Government* (1908), pp. 142-194.

QUESTIONS AND EXERCISES

1. May Congress assign to the President duties not specified in the constitution? Or forbid the exercise of duties imposed by the constitution?
2. May Congress require the President to state reasons for an official action?

3. May the President be sued on account of an official action? May he be summoned as a witness?
4. What powers may the President exercise under his authority to execute the laws of the Union?
5. Prepare a report upon the military powers exercised by President Lincoln during the Civil War.
6. Explain how the President may involve the country in war notwithstanding the right to declare war is vested in Congress.
7. Prepare a report upon the President's power to suppress domestic violence as exemplified by President Cleveland's action in 1894. (*McClure's Magazine* (1904), XXIII, 227-240.)
8. May Congress designate persons to be promoted in the military service? In creating an office, may Congress designate the person who shall fill it?
9. May Congress provide by law that an executive official shall hold office during good behavior?
10. May Congress by statute require the heads of departments to be responsible directly to Congress?
11. Give a history of the Tenure of Office Act of 1867.
12. Has the Senate any control over removals? Why should the President alone exercise the power of removal?
13. May Congress by statute provide that the President shall state reasons for removals?
14. Prepare a list of the principal officers appointed by the President subject to confirmation by the Senate; of officials appointed by the President alone; by the heads of departments.
15. Compare the President's power of appointment with that of your State governor; of your mayor.
16. Make the same comparison with regard to the President's power of removal.
17. May an official of the United States at the same time hold office under a State or territorial government?
18. Prepare a report upon the Spoils System.
19. Prepare a report upon Civil Service Reform.
20. Examine a copy of the President's message to Congress and ascertain: (a) what topics receive most consideration; (b) what recommendations are made as to legislation. State which of these recommendations were enacted into law.
21. May the President sign a bill after Congress adjourns?
22. May either house require the President to submit papers?
23. Was President Johnson bound to carry out the reconstruction acts which he vetoed?
24. What would be the advantage of giving the President power to veto part of a bill? How could this be done?
25. Discuss fully the treaty which closed the Spanish-American War, especially (a) the process of negotiation, (b) the chief provisions, (c) the method of ratification.
26. Has the House of Representatives any control over treaties?
27. Is there any limitation upon the President's pardoning power?

CHAPTER XXVII

THE EXECUTIVE DEPARTMENTS

385. The Federal Executive Departments. Nine federal executive departments have been created by Congress to assist the President in carrying out his executive and administrative duties; and the heads of these departments comprise what is popularly called the President's cabinet. The executive departments are not directly established by the constitution, but are recognized in the clause providing that the President "may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices."¹

The executive departments were organized by Congress in the following order: —

State, 1789; War, 1789; Treasury, 1789; Post Office, 1794;² Navy, 1798; Interior, 1849; Justice, 1870;³ Agriculture, 1889;⁴ Commerce and Labor, 1903.

386. The President's Cabinet. The heads of these nine departments are appointed by the President, subject to the consent of the Senate. Since they are his confidential advisers, each President ordinarily forms a new cabinet, the members of which hold office during his pleasure. Sometimes the President selects for cabinet positions men who have had little experience in politics, but more frequently he chooses prominent party

¹ *Constitution*, Art. II, Sec. 2, Par. 1.

² The Postmaster-General did not become a member of the cabinet until 1829.

³ The office of attorney-general has existed since 1789, although the Department of Justice was not organized in its present form until 1870.

⁴ The Department of Agriculture was organized in 1862, but the Secretary did not become a cabinet officer until 1889.

leaders. Cabinet meetings are generally held twice a week during the greater part of the year, special meetings being called as occasion demands. The President also confers frequently with individual members. The cabinet is an advisory body only, and the President may act in opposition to the wishes of any or all of his secretaries.

The American cabinet is in marked contrast with the cabinet in Great Britain and many other European countries. There the term cabinet denotes a parliamentary ministry, that is, a group of men chosen from the majority party in the legislature, to which body they are accountable. The cabinet members have seats in the legislature, where they initiate legislation and defend the measures which they introduce. Responsibility for the administration rests upon them, and when they cease to have the support of a majority of the legislature, they are expected to resign, in order that a new cabinet may be formed. The American cabinet, on the other hand, is accountable not to the legislature but to the President. Its members may not serve in Congress, and hence they do not introduce and defend measures in that body. An adverse vote of Congress could not remove them from office, since they are appointed by the President, and responsible to him for their administration of affairs.¹

387. The Department of State. The Secretary of State ranks first among the members of the cabinet. His chief duty is to conduct the foreign affairs of the government under the direction of the President. He issues instructions to our ministers and consuls, conducts treaty negotiations, receives and presents to the President the representatives of foreign powers, issues passports to American citizens traveling abroad, and in general has charge of all matters relating to foreign affairs.

American
and Euro-
pean cab-
inets

Control of
foreign
affairs

The Secretary of State also has important domestic

¹ Congress of course exercises indirect control over the executive departments through its power to make appropriations, to investigate the management of any department, and to impeach any executive official for misconduct.

duties. He has the custody of the great seal of the United States; has charge of the publication of federal statutes and executive proclamations; keeps the archives containing the originals of all laws, treaties, and foreign correspondence; and serves as the medium of communication between the President and the State governors.

**Domestic
duties**

The Department of State includes eight bureaus — the diplomatic bureau, consular bureau, and the bureaus of indexes and archives, of accounts, of rolls and library, of appointments, of citizenship, and of trade relations. At the head of each bureau is a chief; and the Secretary of State is further aided in his work by three assistant secretaries of state, who have immediate supervision of diplomatic and consular correspondence.

Bureaus

388. **Department of the Treasury.** The chief business of the Treasury Department is the supervision of the national finances. The Secretary of the Treasury prepares plans for the improvement of the public revenue, and annually submits to Congress estimates of probable receipts and expenditures. He supervises the collection of customs and internal revenue; prescribes the forms for keeping public accounts; issues warrants for all money paid out of the treasury; selects the depositories of public moneys; makes loans by issuing bonds for the protection of the gold reserve or other purposes; and supervises the many bureaus in the Treasury Department. Three assistant secretaries have immediate charge of certain bureaus, and perform such other duties as the Secretary may assign to them.

**Duties of
Secretary**

The department organization includes the following officers: six auditors, the comptroller of the treasury, the treasurer, the register, the comptroller of the currency, commissioner of internal revenue, director of the mint, director of the bureau of engraving and printing, chief of the secret-service division, superin-

**Depart-
mental or-
ganization**

tendent of the life-saving service, the supervising architect, and the surgeon-general.

389. Work of the Treasury Department. All accounts of the government are examined and passed upon by the six auditors of the treasury. Every public officer who pays out money must submit an account with proper vouchers, **The six auditors** and these are scrutinized by one of the six auditors. Thus the auditor for the War Department passes upon all accounts pertaining to that department; and one auditor is also assigned to each of the following departments: Treasury, Navy, Interior, Post Office, and State and other departments.

From the decision of an auditor concerning a claim, an appeal may be taken to the comptroller of the treasury, who is a superior supervising officer of accounts. The comptroller's decision is final, and cannot be reviewed except by the courts. All warrants for the disbursement of money must be countersigned by this officer. **Comptroller**

The treasurer has charge of all public money, and receives and pays it out upon warrants issued by the Secretary of the Treasury. The treasurer also redeems the national-bank notes, holds as trustee the United States bonds deposited to secure the national-bank circulation, pays the interest on the public debt, and performs other miscellaneous duties. **Treasurer**

The register of the treasury signs and issues all bonds, treasury notes, and coin certificates, also all transfers conveying moneys from the treasury to the sub-treasuries or to the public depositories.¹ He also receives, examines, and registers all redeemed notes and securities of the United States. **Register**

The comptroller of the currency is charged with the execution of the national-banking laws. He supervises the national banks, appoints examiners who inspect these institutions, and superintends the issue of bank-note currency. **Comptroller of the currency**

The commissioner of internal revenue has charge of the collection of internal revenue, the chief source of which is the tax on distilled spirits, fermented liquors, tobacco, and oleomargarine. The commissioner is aided by a collector in each revenue district. **Commissioner of internal revenue**

The director of the mint has general supervision of all mints

¹ The public moneys are deposited in the treasury at Washington, or in sub-treasuries at Boston, New York, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans, and San Francisco; or in certain banks designated as public depositories.

and assay offices,¹ and prepares annual reports upon the operations of the mints, and upon the production of the precious metals.

Director of
the mint

The director of the bureau of engraving and printing has charge of the designing, engraving, and printing of all steel engraving work for the government, including bonds and securities of the United States, national-bank notes, internal-revenue stamps, postage and customs stamps, patent and pension certificates.

Bureau of
engraving
and printing

The secret service is a body of detective agents chiefly concerned with the discovery of frauds and crimes against the federal government, especially counterfeiting coins and currency.

Secret-
service
division

The life-saving service in charge of a general superintendent manages several hundred stations located at dangerous points on the oceans and the great lakes.

Life-saving
service

The supervising architect has charge of the selection of sites, and the construction and maintenance of all public buildings belonging to the federal government.

Supervising
architect

The surgeon-general of the public-health and marine-hospital service has charge of the marine hospitals of the United States, controls the national quarantine service, and supervises the medical examination of immigrants.

Surgeon-
general

390. The Department of War. The Secretary of War has charge of all matters pertaining to national defense and sea-coast fortifications, the administration of the insular possessions, river and harbor improvements, and the prevention of obstructions to navigation. He prepares estimates of appropriations for the expenses of his department, supervises all expenditures for the support and transportation of the army, issues orders for the movements of troops, recommends appointments and promotions, and has charge of the Military Academy at West Point.

Duties of
Secretary

The administrative work of the War Department is carried on by eleven bureaus. At the head of each is an army officer detailed for a period of four years. These officers are as follows, the title indicating the functions of each bureau: the military secretary, the in-

Administra-
tive bureaus

¹ United States mints are located at Philadelphia, San Francisco, New Orleans, Carson City, and Denver.



THE POST OFFICE AT NEW YORK CITY

A building of the older type.



(By courtesy of the Treasury Department)

THE POST OFFICE AT ATLANTA, GEORGIA

One of the newest buildings.



THE LIBRARY OF CONGRESS
Washington, D. C.



THE PATENT OFFICE
Washington, D. C.

pector-general, the quartermaster-general, the commissary-general, the surgeon-general, the chief of ordnance, the paymaster-general, the chief signal officer, the chief engineer,¹ the judge-advocate-general, and the chief of the bureau of insular affairs.

In order to unify the work of the several bureaus, and to harmonize the relations between the staff officers (in charge of bureaus) and the line officers (in charge of **The general staff** troops), Congress in 1903 created the general staff, which is in effect a supervising military bureau. The chief of staff, an army officer designated by the President for a term of four years, has general supervision over the eleven administrative bureaus, as well as control of all troops of the line. In addition to the chief, the general staff consists of officers of various ranks who prepare plans for the national defense, investigate and report upon the efficiency of the army, advise the Secretary of War, and aid in coördinating the work of the several administrative bureaus.

391. The Department of Justice. The Attorney-General is the head of the Department of Justice, and the chief law officer of the government. He represents the gov- **The Attorney-General** ernment in all cases to which the United States is a party, and gives his advice and opinion concerning questions of law to the President or the heads of the executive departments.² He exercises general supervision over the federal district attorneys and marshals,³ receiving their reports and examining their accounts; examines the titles of lands which the government intends to purchase for public purposes; and makes an annual report to Congress concerning the business of his department. To the Department of

¹ The chief engineer, assisted by a corps of engineers, is charged with the construction and repair of fortifications, military roads, and bridges; and also with other important duties, as the supervision of river and harbor improvements, and of geographical explorations and surveys.

² The opinions of the Attorney-General are published from time to time by the government, and are regarded as of high authority upon the questions involved.

³ One district attorney and one marshal is appointed in each of the eighty-five judicial districts of the United States.

Justice is also assigned supervision of the penal and reformatory institutions of the United States, the investigation of applications for pardons, and supervision of the commission to codify the federal criminal laws.

The second law officer of the Department is the solicitor-general, who assists in the general duties of the Department and acts as Attorney-General in case of vacancy in that office.

392. Post-Office Department. The Postmaster-General is charged with the general supervision of the postal service.

Duties of Postmaster-General He awards and executes contracts for the transportation of the mails, and directs the management of the domestic and foreign mail service.

The Postmaster-General controls a larger share of federal patronage than any other executive officer except the President. He appoints most of the officers and employees of the Department at Washington; and also appoints all postmasters whose compensation does not exceed \$1000 a year — over 50,000 in number.

The business of carrying letters is a government monopoly, private competition being strictly prohibited. In the carrying of books or merchandise, competition is allowed, and the sender may choose between the express company and the postal service.

Letter-carrying a monopoly Valuable letters or packages may be registered at the post office upon payment of ten cents besides postage. Extra precaution is taken in carrying registered matter, and in case of loss the sender is indemnified for the actual value not exceeding fifty dollars.

Both domestic and international money-orders are issued by the post office. Money may be transmitted by depositing the desired amount with the local postmaster, who issues an order directing the postmaster of the place to which the money is to be sent to pay the sum to the person named in the order. A nominal fee is charged, varying according to the amount of the order.

Registered mail

Money-orders

Nearly all the principal countries conduct a system of postal savings-banks in connection with the post office, and Congress in 1910 authorized such a system Postal sav-
ings-banks for the United States. The telegraph system in foreign countries is commonly controlled through this department, but in the United States it has remained in private hands.

The United States is a member of the Universal Postal Union, which includes all important countries in a single postal territory for the reciprocal exchange of cor- Universal
Postal Union respondence. A uniform rate of postage is fixed, and the mail facilities of each country are placed at the service of all the others. At stated intervals an accounting is made to adjust the balances.

393. Department of the Navy. The Secretary of the Navy, aided by an assistant secretary, superintends the construction, armament, and employment of war vessels, Duties of
Secretary and also exercises general supervision over the naval service. This Department has charge of the Naval War College at Newport, and the Naval Academy at Annapolis.

The administrative work of the Department is carried on by eight bureaus, the names of which indicate the work done. These are the bureaus of ordnance, equip- Bureaus ment, navigation, yards and docks, supplies and accounts, steam engineering, medicine and surgery, and construction and repairs. Most of these are in charge of line officers of the navy, commonly having the rank of rear admiral; and other naval officers are assigned to bureau duties from time to time, this service alternating with service at sea.

394. Department of the Interior. In the importance and diversity of its business, the Department of the Interior ranks as one of the greatest of the executive de- Diversity
of duties partments. The Secretary of the Interior (aided by two assistant secretaries) is charged with the supervision of the public lands and surveys, pensions, patents,

Indian affairs, education, and the geological survey. He also supervises the national parks and reservations, and the organized territories; distributes the appropriations for agricultural and mechanical colleges throughout the Union; and supervises certain hospitals and charitable institutions in the District of Columbia.

The business of the Department is carried on by various
Bureaus bureaus: the general land office, bureau of patents, bureau of pensions, office of Indian affairs, bureau of education, office of the geological survey, and the reclamation service. Each bureau is in immediate charge of a principal officer called a commissioner,¹ who is appointed by the President with the consent of the Senate.

395. The General Land Office. The commissioner of the general land office has charge of the survey, management, and sale of the public domain.² Nearly two thirds of the present
The public domain area of the United States has at one time or another formed a part of the public domain belonging to the national government. This immense territory has been acquired by cession, purchase, and conquest.³ The greater part has been disposed of in various ways, chiefly by sale at a nominal price to individual settlers, or as bounties for military or naval service, or as grants to corporations for the purpose of aiding the construction of railroads, or as grants to the States in aid of education and internal improvements.

About 1,600,000 square miles of public lands are still owned by the national government, nearly one third of which is in Alaska,
Homestead Act and most of the remainder in the States west of the 104th meridian. Under the Homestead Act, any adult citizen of the United States who is the head of a family, and is not already the proprietor of 160 acres of land, is entitled to enter a quarter-section (160 acres) of unappropriated public land. He may acquire title by maintaining his residence upon it, improving and cultivating the land for a period of five years, and the payment of nominal fees.

¹ Except the geological survey and reclamation service, whose chief officers are called directors.

² Throughout the earlier years of our history, the Secretary of the Treasury was in charge of the public domain. In 1812 the office of commissioner of the general land office was created as a bureau in the Treasury Department. In 1849 the land office bureau was transferred to the Interior Department.

³ A list of our territorial acquisitions is given in Section 482.

Generally, before public land is opened for sale, it must be surveyed according to the rectangular system adopted in the Ordinance of 1785. Under this plan the lands are divided by north and south lines along the true meridian, and by others running east and west so as to form townships as nearly as possible six miles square. Townships are divided into sections, one mile square or 640 acres, as nearly as may be; and the sections in each township are numbered consecutively from one to thirty-six. Sections are further subdivided into half-sections of 320 acres, and quarter-sections of 160 acres.

**Survey of
public lands**

396. Other Bureaus of the Interior Department. The commissioner of patents is charged with the administration of the patent laws. He performs important duties of a judicial nature, since he acts as a tribunal in deciding whether a patent may be granted, and in settling disputes between rival claimants to the same invention. The commissioner is aided by an assistant commissioner, a board of three examiners-in-chief, and a large staff of examiners, clerks, and assistants. The Patent Office is self-supporting, the fees from patents more than covering the expenditures of the office.¹

**Commis-
sioner of
patents**

The commissioner of pensions, aided by two deputy commissioners, supervises and decides claims for pensions on account of military or naval service. Pension agencies located in various parts of the country facilitate the payment of claims. In the granting of military pensions the United States has been more liberal than any other nation, having paid out for this purpose a total of nearly four billion dollars.²

**Commis-
sioner of
pensions**

The bureau of Indian affairs looks after matters pertaining to the Indian tribes, especially their lands, moneys, supplies, and schools. Since 1871 Congress has recognized the actual status of the Indians as wards of the government, and has dealt with them as individuals, rather than as tribes; and so far as possible, lands have been allotted to them in individual ownership.

**Commis-
sioner of
Indian
affairs**

¹ For a discussion of the subject of patents, see Chapter xxxv.

² The following amounts have been paid to soldiers, their widows, minor children, and dependent relatives on account of military and naval service during the wars in which the United States has been engaged: —

War of the Revolution (estimated)	\$70,000,000.00
War of 1812 (on account of service, without regard to disability)	45,757,396.84
Indian wars (on account of service, without regard to disability)	9,995,609.47
War with Mexico (on account of service, without regard to disability)	42,492,784.07
Civil War	3,686,461,840.35
War with Spain	26,383,805.21
Regular establishment	15,507,028.02
Unclassified	16,484,049.77
Actual total disbursements in pensions	3,913,082,513.73

There are now about 140 Indian reservations, most of them west of the Mississippi, with a total area of about 75,000,000 acres, and a population of about 270,000 Indians. Generally the Indians on these reservations maintain their tribal organization; but a large degree of control is exercised by the federal government through the Indian agents, one of whom exercises supervision over each tribe. Nearly 300 reservation schools are maintained by the federal government, besides twenty-five Indian schools in other parts of the country, the most famous being those at Hampton and Carlisle.

It is the duty of the commissioner of education to collect statistics as to the condition and progress of education in the various states and in foreign countries; to diffuse information respecting the organization and management of school systems and methods of teaching; and in general to promote the cause of education throughout the country. Under our system of government, direct control of the public-school system is in charge of the individual States; and hence the duties of the bureau of education are chiefly advisory. Nevertheless, the investigations and reports of the bureau have been of the greatest value to educators, especially the annual report, which gives detailed statistics concerning public and private education in the United States, as well as a summary of educational work in foreign countries.

The director of the geological survey has charge of the classification of public lands, and the examination of the geological structure, mineral resources, and products of the national domain.

The director of the reclamation service has charge of the survey, construction, and operation of irrigation works on arid lands. In many parts of the West, the federal government is performing an economic function of the highest value in reclaiming vast areas of desert land through the construction of great irrigation dams and reservoirs. The lands irrigated in this way are sold to actual settlers upon small annual payments, which will ultimately cover the cost of constructing the irrigation works; and the funds thus obtained are used for the construction of additional reclamation projects. In this way, hundreds of thousands of acres of desert land are being made highly productive.

397. The Department of Agriculture. The Secretary of Agriculture has general supervision over all scientific in-



THE GREAT GARLAND CANAL ON THE SHOSHONE PROJECT, WYOMING

This is sixty miles long and distributes the water stored by the Shoshone Dam over an area of 125,000 acres.



THE TRUCKEE RIVER IRRIGATING CANAL, NEVADA

This shows the concrete construction and one of the flood-gates through which the river water enters the canal.

vestigations relating to the agricultural industry. He directs the investigations and experiments designed to give farmers¹ useful information concerning soils, grains, fruits, and stock. Through his Department, millions of packages of seeds are distributed gratuitously, and with them is sent information obtained by constant experiment. The Secretary has charge of quarantine stations for imported cattle, and the inspection of domestic meats and imported food products. The Department issues a large number of scientific and technical publications, including the Year-Book, the series of Farmers' Bulletins, the Monthly Weather Review, and the Crop Reporter.

The organization of the Department of Agriculture includes the following bureaus and divisions, the titles of which indicate the nature of the work performed: the weather bureau, bureau of animal industry, bureau of plant industry, forest service, bureau of chemistry, bureau of soils, bureau of statistics, bureau of entomology, bureau of biological survey, office of experiment stations, division of accounts and disbursements, division of publications, library, and office of public roads.

The weather bureau renders especially important service in forecasting storms, thus preventing many losses to agriculture and commerce. Meteorological observations are taken at over two hundred stations, and the information is forwarded to the central office at Washington, where weather predictions for the succeeding day or days are made. The predictions are given to the public through a system of flag signals, by the distribution of weather maps, and by publication in the daily papers.

The forest service has charge of the national forest reserves, now amounting to about 160,000,000 acres. By creating these reserves, the federal government has checked the threatened deforestation of our country; and the constant patrolling by forest-service rangers has prevented many disastrous fires, as well as thefts by lumber thieves. From time to time the forest service plants large areas with trees suitable to the climate and soil of the particular region.

398. Department of Commerce and Labor. The Department of Commerce and Labor, created by Congress in 1903, “fosters, promotes, and develops the foreign and domestic commerce, the mining, manufacturing, shipping, and fishing industries, the labor interests, and the transportation facilities of the United States.” This Department has charge of the investigation of corporations, labor interests, promotion of American manufactures, the census, statistics, immigration, lighthouses, coast survey, and steamboat inspection.

The Department organization includes twelve important bureaus: bureau of corporations, bureau of manufactures, bureau of labor, lighthouse board, bureau of the census, coast and geodetic survey, bureau of statistics, steamboat-inspection service, bureau of fisheries, bureau of navigation, bureau of immigration, and bureau of standards.

399. Miscellaneous Boards and Commissions. In addition to the nine great executive departments, there are several independent boards and commissions which perform executive business not assigned to any of the departments. The most important of these are the Interstate Commerce Commission, the Civil Service Commission, the Congressional Library, the Government Printing-Office, the International Bureau of American Republics, and the Smithsonian Institution.

GENERAL REFERENCES

- Ashley, Roscoe, *The American Federal State* (1903), pp. 303-313.
 Beard, C. A., *American Government and Politics* (1910), ch. xi.
 ——— *Readings in American Government and Politics* (1910), ch. xi.
 Bryce, James, *The American Commonwealth* (1907), I, pp. 86-96.
 Congressional Directory, *Summary of Departmental Duties* (1909), pp. 291-322.
 Fairlie, John A., *The National Administration of the United States* (1905), pp. 54-262.
 Finley, John H., *The American Executive and Executive Methods* (1908), ch. xvi.

- Ford, H. J., *The Rise and Growth of American Politics* (1898), pp. 383-396.
- Forman, S. E., *Advanced Civics* (1905), ch. XIX.
- Goodnow, F. J., *Comparative Administrative Law* (1903), I, pp. 127-161.
- Harrison, B., *This Country of Ours* (1903), pp. 181-299.
- Hart, A. B., *Actual Government* (1903), pp. 276-282.
- Lowell, A. L., *Essays on Government* (1889), no. I.
- Reinsch, P. S., *Readings on the American Federal Government* (1909), ch. IX.
- Various Authors — *History-Making, The Story of a Great Nation* (1910).
- Woodburn, J. A., *The American Republic* (1908), pp. 189-194.

QUESTIONS AND EXERCISES

1. What is the meaning of "department" as the term is used in the constitution? Why is our cabinet said to be extra-constitutional?
2. How are cabinet officers appointed and confirmed? How may they be removed?
3. Could Congress require the President to consult and follow the judgment of his cabinet?
4. Could Congress by statute give seats in either house to cabinet officers? What would be the advantages of this plan?
5. Discuss the relations between the departments and the congressional committees. (McConachie, L. G., *Congressional Committees*, p. 221.)
6. Discuss the advantages of the British cabinet system.
7. Name the members of our present cabinet. Which States are represented? Describe the previous public service of its members.
8. What is the purpose of the International Bureau of American Republics? (Barrett, John, in *History-Making*, pp. 50-52.)
9. Consult the Congressional Directory and other sources, and prepare a short report upon the duties of the State Department.
10. Name several of our greatest Secretaries of State.
11. Contrast the position of our Secretary of the Treasury with that of the finance minister of a European country. (Reinsch, P. S., *Readings on American Federal Government*, pp. 367-368.)
12. Prepare a brief report upon the fiscal business of the Treasury Department. (Congressional Directory; Reinsch, P. S., *Readings*, pp. 362-377.)
13. Prepare a report upon the miscellaneous business of the Treasury Department. (Congressional Directory; Reinsch, P. S., *Readings*, pp. 363-364.)
14. Describe the work of the secret-service bureau. (Wilkie, John E., in *History-Making*, pp. 21-28.)
15. Report upon the work of the bureau of the mint. (Leach, Frank A., in *History-Making*, pp. 133-137.)
16. What is meant by the statement that "the Secretary of the Treasury came to the aid of the money market"?
17. Report upon the functions of the several bureaus of the War Department. (Congressional Directory.)
18. Describe the position of the chief-of-staff of the army. (Wayne, Flynn, in *History-Making*, pp. 206-209.)
19. Compare the position of Attorney-General with that of your State's attorney; also with that of the prosecuting attorney of your county, and of your city solicitor.

20. Prepare a report upon the functions of the Department of Justice. (Congressional Directory; also, Bonaparte, Charles J., in *History-Making*, pp. 35-39; Reinsch, P. S., *Readings*, pp. 377-381.)
21. Cite facts which tend to prove that our post office is the largest business enterprise in the world.
22. What are some of the abuses of the present classification of mail matter? (Reinsch, P. S., *Readings*, pp. 383-385.)
23. Discuss the fraud orders of the Post-Office Department. (Reinsch, P. S., *Readings*, pp. 391-393.)
24. When were postal savings-banks first established in the United States? Purposes and advantages of the system?
25. Give arguments for and against government ownership of railways and telegraph lines.
26. Prepare a report upon the duties of the Navy Department. (Congressional Directory; also Newberry, J. H., in *History-Making*, pp. 58-66.)
27. Report upon the work of the general land office. (Congressional Directory; also Dennett, Fred, in *History-Making*, pp. 40-43.)
28. Describe the work of the reclamation service. (Newell, E. H., in *History-Making*, pp. 188-190.)
29. Describe the work of the weather bureau. (Moore, W. L., in *History-Making*, pp. 149-154.)
30. In what ways does the federal government promote agriculture?
31. Prepare a report upon the scientific work of the federal government. (*History-Making*, pp. 29, 83, 98, 149, 183, 188; Reinsch, P. S., *Readings*, pp. 419-432.)
32. Describe the purpose and work of the bureau of corporations. (Reinsch, P. S., *Readings*, pp. 529-537.)
33. Prepare a report upon the Congressional Library. (Putnam, Herbert, in *History-Making*, pp. 138-148.)
34. Discuss the work of the Civil Service Commission. (Kaye, P. L., *Readings in Civil Government*, pp. 232-242; Reinsch, P. S., *Readings*, pp. 683-702.)
35. Describe the work of the census bureau.
36. What department has charge of the erection of federal buildings? Of river and harbor improvements? Of the granting of patents? Of immigration? Of the collection of customs? Of the infringement of the rights of our citizens abroad?
37. Readings on the executive departments: Kaye, P. L., *Readings*, pp. 211-225; Reinsch, P. S., *Readings*, pp. 362-460; Beard, C. A., *Readings*, ch. ix.



(By courtesy of Foster and Reynolds)

THE STATE, WAR, AND NAVY DEPARTMENTS



SUPREME COURT CHAMBER

CHAPTER XXVIII

THE FEDERAL JUDICIARY

400. **Necessity of a Federal Judiciary.** Under the Articles of Confederation there was no provision for a federal judiciary.¹ Hence the laws and treaties of Congress were not addressed to individuals as commands, for violation of which the courts would enforce a penalty; but were merely requests or recommendations addressed to sovereign States. With the establishment of a new government possessing the attributes of nationality and empowered to pass laws operating directly upon individuals, a national judiciary was essential in order to interpret and apply those laws, and to enforce a penalty for their violation. The creation of the federal judiciary as an independent and co-ordinate department of the government,² with final power to decide as to the interpretation and constitutionality of legislative and executive acts, was the unique and crowning achievement of the Constitutional Convention of 1787.

401. **The National Courts.** The constitution vests the judicial power of the United States in one Supreme Court, and in such inferior courts as Congress may see fit to establish. In accordance with this provision, ^{Judiciary Act of 1789} Congress in 1789 passed the Judiciary Act drafted by Oliver Ellsworth, which with modifications still forms the basis of our judicial system. This act organized the Su-

¹ The Confederation Congress was made a court of appeal in case of disputes between two or more States concerning boundaries, jurisdiction, and other causes; and Congress was authorized to erect admiralty courts with certain powers. But neither Congress nor these courts had the all-important power of enforcing their judgments.

² "The judicial department is ultimately dependent on the executive department to enforce its judgments if resisted, and upon the legislative department for the appropriation of the funds necessary to enable it to continue in existence and discharge its functions." McClain, E., *Constitutional Law in the United States*, pp. 219-220.

preme Court, and also created circuit and district courts; it apportioned the federal jurisdiction among the three grades of courts; created the office of Attorney-General, and provided for a marshal in each judicial district.

In 1891 Congress created nine “circuit courts of appeals” in order to relieve the Supreme Court of part of its former appellate jurisdiction; so that there are now four grades of federal courts — the Supreme Court, the circuit court of appeals, the circuit court, and the district court.

402. Federal Judges. In 1910 the number of federal judges was as follows: Supreme Court justices, nine; circuit judges, twenty-nine; district judges, eighty-nine. All United States judges are appointed by the President, subject to confirmation by the Senate; and their term of office is for life, or during good behavior. Federal judges are thus made independent both of the appointing power and of the popular will, since they can be removed from office only by conviction on impeachment charges.¹

Judges receive a compensation which may be increased but cannot be diminished during their continuance in office. The justices of the Supreme Court are paid \$12,500 a year (the chief justice receiving an additional \$500); circuit judges, \$7000; and district judges, \$6000. Any judge who has held his commission at least ten years may resign on attaining the age of seventy years, and continue to draw full salary during the remainder of his life.

403. Jurisdiction of the Federal Courts. The federal courts authorized by the constitution are courts of limited, not of general, jurisdiction; that is, they have authority to try only such cases as are specifically placed within their jurisdiction by the provisions of the federal constitution and the laws enacted by Congress.

¹ Only three federal judges have ever been impeached, and but two convicted: Judge Pickering in 1803, and Judge Humphreys in 1862.

The nine classes of cases enumerated in the constitution may be grouped under two general heads: (1) cases in which the federal jurisdiction depends upon the character of the suit; (2) cases in which the federal jurisdiction depends upon the character of the parties.

404. Jurisdiction depending upon Character of Suit.

The class of cases in which jurisdiction depends upon the character of the suit includes: (a) cases in law or equity arising under the constitution or laws of the United States, Enumera-
tion of cases or treaties made under their authority. (b) Cases of admiralty and maritime jurisdiction. (c) Controversies between citizens of the same State claiming lands under grants of different States.

The most important cases within this group are those arising under the federal constitution, laws, or treaties; for it is by virtue of this authority that the national courts are enabled to maintain and enforce the provisions of the federal Cases under
federal law constitution, as well as the laws and treaties made under its authority. In order to come within the federal jurisdiction, it must appear that some right, title, privilege, or immunity claimed by one of the parties involves a construction of the federal constitution, laws, or treaties. Thus, if one of the parties claims that a State law affecting his rights is a law which impairs the obligation of contracts, the case is within federal jurisdiction, since it involves the construction of the federal constitution.¹ Or if one holding a patent from the federal government desires to bring suit for infringement, this would be a case arising under the laws of the United States, since patents are granted only by federal law. Again, if a municipality should pass an ordinance requiring all Chinese inhabitants to remove to a certain quarter of the city, the aliens concerned could seek redress in the federal courts, since the case would be one arising under a treaty.²

The judicial power of the United States also extends "to all cases of admiralty and maritime jurisdiction." Since the high seas are the joint property of the nations, Maritime
jurisdiction the determination of maritime rights or transactions on such waters is necessarily beyond the jurisdiction of the

¹ Article I, Section 10 of the constitution provides that no State shall pass any law impairing the obligation of contracts.

² The Burlingame treaty with China guaranteed to Chinese subjects the same privileges in respect to residence as are enjoyed by the citizens or subjects of the most favored nation. *In re Lee Sing et al.*, 43 Fed. Rep. 359; Thayer's Cases, I, 861.

State courts. As now construed, the admiralty jurisdiction of the federal courts extends not only over the high seas, but over all of the navigable waters of the United States which constitute avenues for foreign or interstate commerce.

Likewise reserved for federal decision are controversies between citizens of the same State claiming lands under grants of different States. As the rights of the two States to grant the lands are drawn into question, it is clear that the courts of neither State should decide the controversy.

405. Jurisdiction depending upon Character of Parties. The second group of cases, wherein federal jurisdiction depends upon the character of the parties, includes: (a) cases affecting ambassadors, other public ministers, and consuls. (b) Controversies to which the United States is a party.¹ (c) Controversies between two or more States. (d) Controversies between a State and citizens of another State.² (e) Controversies between citizens of different States. (f) Controversies between a State, or the citizens thereof, and foreign States, citizens, or subjects. It is apparent that this group of cases includes those controversies whose determination by a federal tribunal is necessary to secure harmonious foreign and interstate relations, or to secure an impartial decision concerning the rights of citizens of the several States.

406. The Federal Judicial System. As already stated, the judicial power of the United States is vested in a system of courts of four grades: the district courts, circuit courts, circuit courts of appeals, and the Supreme Court. The Supreme Court is expressly provided for by the constitution, and is therefore largely independent of Congress. The courts of the other three grades are statutory courts; that is, they are created by Congress, which body may alter their jurisdiction or abolish them entirely, at its discretion.

407. Federal District Courts. The federal courts of lowest grade are the district courts, one of which exists in each

¹ This includes all federal criminal suits; also suits by the United States against individuals for debt, for the non-fulfillment of contracts, or for wrongful possession of property.

² Shortly after the decision in the case of *Chisholm v. Georgia* (1793), the eleventh amendment was added to the constitution. This provides in effect that a State cannot be sued in a federal court by citizens of another State, or by citizens of a foreign state. Hence while States may bring suits in federal courts against citizens of other States, they cannot themselves be sued by individuals in the national courts.

of the eighty districts into which the United States is divided. No district includes more than one **Lowest federal court** State, but many States are divided into two or more districts. Each district ordinarily has its own district judge, who holds court at one or more places within the district.

The most important jurisdiction possessed by the district courts is that of trying prosecutions for crimes against federal law, other than capital offenses. The **Jurisdiction** district courts also have jurisdiction in certain civil cases, including bankruptcy, admiralty and maritime cases, and suits brought by the United States to enforce the revenue or other federal laws.¹

408. Federal Circuit Courts. Next above the district courts are the circuit courts, nine in number, each circuit including several judicial districts. Two or more **Organization** circuit judges are appointed for each circuit, with authority to preside over the circuit court; but inasmuch as the circuit judges are also judges of the circuit courts of appeals, the circuit court is ordinarily held by one of the district judges of the circuit.²

The circuit court has jurisdiction over all prosecutions for crime against the laws of the United States, and exclusive jurisdiction over capital offenses. The civil **Jurisdiction** jurisdiction of the circuit court is extensive, and embraces cases arising under the constitution, laws, or treaties of the United States; also controversies between citizens of different States, or between citizens of a State and a foreign state, citizens, or subjects, provided the amount in controversy exceeds \$2000.³ Suits under the

¹ Suits by the United States may be brought in the circuit court if the amount involved exceeds \$2000.

² Each of the nine justices of the Supreme Court is also assigned to a particular circuit, and it was formerly the practice for each Supreme Court justice to preside over a circuit court; but the practice is now abandoned, although the authority remains. Circuit court may thus be held by a Supreme Court justice, by a circuit judge, or by a district judge, sitting alone; or by any two or all of them, sitting together.

³ If the sum in dispute is less than \$2000, the State courts have exclusive jurisdiction; but the decision of the highest State court may be reviewed on error by the United States Supreme Court, if it denies a right claimed under federal law.

patent or copyright laws, the postal laws, and proceedings under the interstate commerce law, the anti-trust law, and under the immigration acts, may be brought in the circuit court without regard to the amount of money involved.

409. Federal Circuit Courts of Appeals. In order to relieve the work of the Supreme Court, a new court known as the circuit court of appeals was established in 1891 in each of the nine circuits. This court consists of three judges (two of whom constitute a quorum), selected from the following list: the Supreme Court justice assigned to the particular circuit, the circuit judges, and the district judges of the circuit.

The circuit court of appeals exercises only appellate jurisdiction. In most civil cases, and in criminal cases where the crime is not capital,¹ appeals may be taken from the lower federal courts to the circuit court of appeals. With few exceptions the decisions of this court are conclusive, no appeal to the Supreme Court being permitted.

410. The Federal Supreme Court. The Supreme Court consists of one chief justice and eight associate justices, six of whom constitute a quorum. This court sits at the national capital, its sessions being held annually, commencing on the second Monday in October. After a case has been tried before the court, the opinion of a majority of the judges is ascertained, and the chief justice then assigns to one of his associates the task of writing the decision. This is then read before the others, and if accepted by a majority it becomes the decision of the court.

The jurisdiction of the Supreme Court is of two kinds, original and appellate. Its original jurisdiction, being prescribed by constitutional provision, cannot be abridged or extended by statute. The Supreme Court has original jurisdiction (1) in all cases affecting ambassadors, other public ministers,

¹ If the crime is capital or otherwise infamous, the appeal is to the Supreme Court.

and consuls; (2) in cases in which a State is a party. The original jurisdiction of the Supreme Court has been resorted to principally to settle controversies between the States.

The appellate jurisdiction of the Supreme Court is subject to the control of Congress, and may be enlarged or restricted by that body. The Supreme Court now hears appeals from the inferior federal courts as follows: (1) Cases from the district or circuit court in which the jurisdiction of the court is in question; final decrees in prize cases; cases of conviction for capital or otherwise infamous crimes; cases involving the construction or application of the constitution of the United States, or of a federal law or treaty; cases in which the constitution or law of a State is claimed to be in contravention of the constitution of the United States. (2) Certain cases may be certified to the Supreme Court by the circuit court of appeals, or removed from that court by direction of the Supreme Court. (3) In certain cases the Supreme Court hears appeals from the supreme courts of the territories, the supreme court of the District of Columbia, and from the court of claims.

**Appellate
jurisdiction**

(4) Finally, the Supreme Court has power to hear appeals from State courts of last resort in cases involving a federal question, where the decision of the State court is against the validity of a federal statute or treaty or authority exercised under the United States; or where the decision of the State court is against the title, right, privilege, or immunity claimed by either party under the constitution, laws, treaties, or authority of the United States; or where the decision of the State court is in favor of a State statute or constitutional provision which is claimed to be repugnant to the federal constitution, laws, or treaties.

**Appeals
from State
courts**

411. Special United States Courts. The four courts described above constitute the national judicial system, and exercise the judicial powers prescribed in the federal constitution.¹ But in the exercise of its own authority, Congress has created several special tribunals. Of these the most important is the court of claims (created in 1855), composed of five justices who sit at Washington. This court has authority to try claims against the United States, and if its judgment is in

**Court of
claims**

¹ The circuit courts may appoint United States commissioners, with power to take affidavits and conduct preliminary hearings in criminal cases, and also with certain powers in admiralty cases. While the federal district courts have original jurisdiction in bankruptcy cases, the statute regulating this subject provides for referees who may perform many of the judicial duties in bankruptcy proceedings, their jurisdiction generally being confined to a single county.

Court. However, many cases arise which involve only the application of general principles of law, or the construction of State constitutions and statutes. In such cases, the general rule is that in administering the local or State law, the federal courts will follow the settled decisions of the highest State court.

414. Declaring Legislative Acts Void. Federal courts, like those of the States, exercise a twofold function. In common with the courts of all countries, they have the power of determining the meaning of a legislative enactment involved in any case before the court, and applying the law, when its meaning has been ascertained, to the particular case. But American courts have a second function which foreign judiciaries do not possess; for they have the power to decide whether the legislative enactment involved in the case before the court is one which the legislature is warranted under the constitution in passing — in short, whether the particular enactment is law at all.

The federal constitution, we have seen, is the supreme law of the land, and Congress has only such legislative power as the constitution confers. It is the function of the judiciary to decide whether legislative or executive acts involved in cases before the court are in excess of the authority granted; for if so, they are null and void. This power likewise extends to acts of the State legislatures and provisions of the State constitutions, which, to be valid, must not conflict with any provision of federal law.

In the case of *Marbury v. Madison*,¹ decided in 1803, the doctrine was first explicitly asserted that an act of Congress repugnant to the federal constitution was void; and from that date the position of the United States Supreme Court as the final and authoritative interpreter of the constitution was assured.

¹ 1 Cranch, 137; Thayer, 1, 107.

In *United States v. Judge Peters* (1809), in *Martin v. Hunter's Lessee*¹ (1816), *McCulloch v. Maryland*² (1819), and in *Cohen v. Virginia*³ (1821), the Supreme Court asserted its power to disallow acts of the State legislature which were repugnant to the federal constitution.⁴ Since these cases, scores of State statutes and many provisions of State constitutions have been set aside as void because of conflict with the federal constitution. The most famous decision disallowing an act of Congress was probably the *Dred Scott Case*⁵ decided in 1857, denying the power of Congress to prohibit slavery in the territories. Other notable decisions of the Supreme Court setting aside acts of Congress are: the first Legal-Tender Decision (1870), disallowing the Legal-Tender Act;⁶ the Civil-Rights Cases (1883-84), in which acts designed to protect negro citizens were disallowed; the Trade-Mark Cases (1879), in which the general power of the national government to register trade-marks was denied;⁷ and the Income-Tax Cases (1895), in which, by a majority of one, the federal tax on incomes was declared unconstitutional.

Other
important
cases

GENERAL REFERENCES

Ashley, Roscoe, *The American Federal State* (1903), ch. xvi.

Baldwin, S. E., *The American Judiciary* (1905).

Beard, C. A., *American Government and Politics* (1910), ch. xv.

——— *Readings in American Government and Politics* (1910), ch. xv.

Black, H. C., *American Constitutional Law* (1897), ch. vii.

Burgess, J. W., *Political Science and Comparative Constitutional Law* (1905), II, 320-332.

Bryce, James, *The American Commonwealth* (1907), I, chs. xxii-xxiv.

Cooley, T. M., *Constitutional Law* (1898), ch. vi.

¹ 1 Wheaton, 304; Thayer, I, 123.

² 4 Wheaton, 316; Thayer, I, 271.

³ 6 Wheaton, 264; Thayer, I, 285.

⁴ Perhaps the most noted decision setting aside an act of a State legislature was the *Dartmouth College Case*, decided in 1819. This case declared void an act of the New Hampshire legislature on the ground that it impaired the obligation of a contract, thus contravening Section 10, of Article I of the federal constitution, forbidding the States to pass any law impairing the obligation of contracts. 4 Wheaton, 518; Thayer's Cases, II, 1564.

⁵ *Dred Scott v. Sandford*, 19 Howard, 393.

⁶ The adverse decision in this case was rendered by four judges to three, and was reversed the following year by five judges to four. The Legal Tender Cases, 12 Wallace, 457, 529.

⁷ The federal government has power to protect only those trade-marks used in foreign or interstate commerce.

- Goodnow, F. J., *Comparative Administrative Law* (1903), II, 144-216.
 Hamilton, Jay, and Madison, *The Federalist* (ed. by Lodge, 1904), nos. 78-83.
 Harrison, B., *This Country of Ours* (1903), chs. XX-XXI.
 Hart, A. B., *Actual Government* (1903), ch. XVII.
 Landon, J. S., *The Constitutional History and Government of the United States* (1905), chs. XIII-XIV.
 McClain, E., *Constitutional Law in the United States* (1905), chs. XXIV-XXIX.
 Pomeroy, J. N., *Constitutional Law of the United States* (1888).
 Reinsch, P. S., *Readings on the American Federal Government* (1909), ch. XIV.
 Schouler, James, *Constitutional Studies* (1904), pp. 169-177.
 Story, J., *Commentaries on the Constitution of the United States* (5th ed., 1905), secs. 1573-1795.
 Tucker, J. R., *The Constitution of the United States* (1899), II, ch. XIII.
 Willoughby, W. W., *The Supreme Court of the United States* (1890).
 Wilson, Woodrow, *Constitutional Government in the United States* (1908), ch. VI.
 Woodburn, J. A., *The American Republic and Its Government* (1908), ch. VI.

QUESTIONS AND EXERCISES

1. What territory is included in your federal judicial district? Where is the court held? Name the district judge, the district attorney, and the marshal. For what term and by whom is each appointed?
2. What States are included in your judicial circuit? Who is the Supreme Court justice for this circuit? Who are the circuit judges?
3. Name the justices of our present Supreme Court? Name the men who have held the position of chief justice. Which ones are most famous?
4. Prepare a report upon the influence of John Marshall as chief justice.
5. May Congress by statute abolish the Supreme Court? Increase or decrease the number of Supreme Court judges?
6. Compare the method of appointment and term of federal judges with that of the judges of your State supreme court.
7. What are the advantages of life tenure for judges? (Kaye, P. L., *Readings in Civil Government*, pp. 247-250.)
8. Describe the process by which the United States Supreme Court renders a decision. By whom is the decision written, by whom reported, and where published? (Reinsch, P. S., *Readings*, pp. 716-717.)
9. May the President require the opinion of the Supreme Court upon a legislative measure? Whom should he consult?
10. How are the judgments of the Supreme Court carried out? If the President should refuse to execute them, is there a remedy?
11. Is the Supreme Court bound by its own previous decisions?
12. What is the effect of a decision of the United States Supreme Court upon persons not parties to the suit?
13. How is the jurisdiction of the federal courts determined?
14. What was the constitutional result of the eleventh amendment? May a State sue another State in the federal courts for the payment of bonds?
15. State the conditions under which a case may be appealed from the supreme court of your State to the United States Supreme Court.

16. Prepare a report showing how the federal courts protect the rights: (a) of the nation; (b) of the States; (c) of citizens.
17. Report upon the use of each of the following judicial writs: *habeas corpus*, *injunction*, *mandamus*.
18. Describe the power, process, and effect of declaring legislative acts unconstitutional. (*Marbury v. Madison*, 1 Cranch, 137; Thayer's Cases, I, 107; McClain, E., *Constitutional Law in the United States*, pp. 19-25.)
19. May a State court declare a federal law unconstitutional?
20. Was the Sedition Act constitutional? The Embargo Act? The Missouri Compromise?
21. Select one of the following cases, and report upon the constitutional question decided: *McCulloch v. Maryland* (4 Wheaton, 316; Thayer's Cases, I, 271); *Dred Scott v. Sandford* (19 Howard, 393); the Legal-Tender Cases (12 Wallace, 457, 529; Thayer's Cases, II, 2237); the Civil-Rights Cases (109 U. S. 3; Thayer's Cases, I, 554); the Income-Tax Cases (*Springer v. United States*, 102 U. S. 586; Thayer's Cases, II, 1321); *Pollock v. Farmers' Loan and Trust Co.*, 157 U. S. 429.
22. Assuming that there is a conflict between the following laws, state which one prevails: (a) a city ordinance and a State statute; (b) a city charter and a State constitution; (c) a State constitution and a law of Congress; (d) a State statute and a law of Congress; (e) a State constitution and the federal constitution; (f) a law of Congress and a treaty; (g) a law of Congress and the federal constitution. (Section 150.)
23. Readings on the federal judiciary: Kaye, P. L., *Readings*, pp. 243-249; Reinsch, P. S., *Readings*, pp. 703-715; Beard, C. A., *Readings*, ch. xv.

CHAPTER XXIX

EXPENDITURE AND REVENUE

415. Objects of Federal Expenditures. The total expenditures of the national government now approximate one billion dollars annually, the objects of expenditures being shown by the diagram on the next page.

416. Growth of Government Expenditures. In 1800, the total federal expenditures amounted to \$10,813,000, or \$1.17 per capita; in 1860, the amount was \$63,200,000, or \$2.01 per capita; while in 1909, the total expenditures were \$1,002,303,040, or \$10.87 per capita. Thus the total volume of expenditure is now nearly sixteen times as great as it was about fifty years ago, and the per capita expenditure is more than five times as great.

While a portion of this expenditure is undoubtedly wasteful, it must be kept in mind that governments to-day perform many more services than formerly, and expenditures have grown larger as government activities have increased. Moreover, while the per capita expenditure has increased, wealth has also greatly increased, especially in the United States; and hence the increased expenditure does not necessarily mean a greater burden to the individual taxpayer.

417. Control of Federal Expenditures. Control of federal expenditures is vested in Congress under the constitutional provision that no money shall be drawn from the treasury except in consequence of an appropriation made by law.¹ Hence Congress has absolute power over expenditures, subject only to the executive veto.² About one third of the federal expenditures are permanent, or permanent specific; that is, voted for a certain purpose without limita-

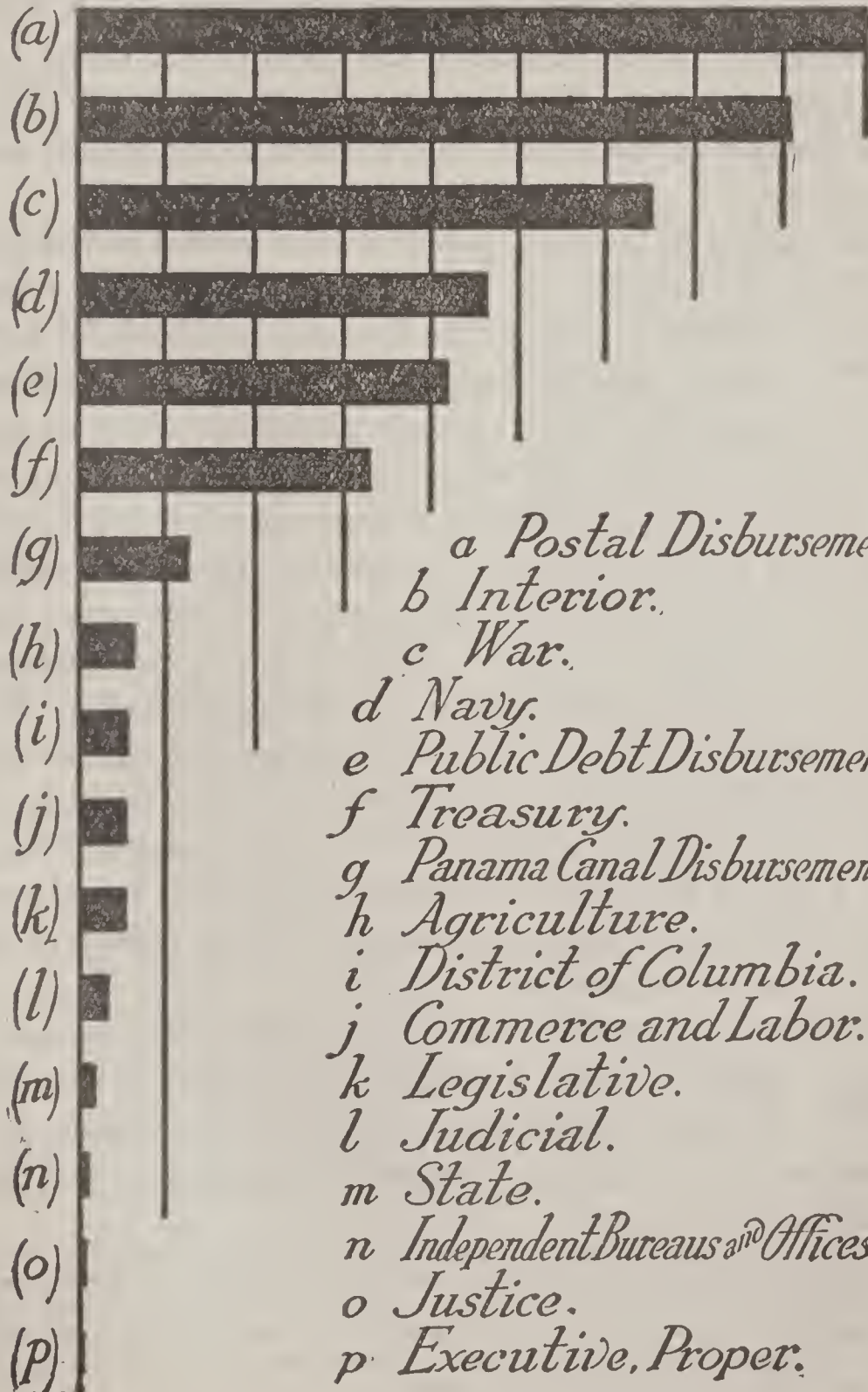
¹ *Constitution*, Art. I, Sec. 9, Par. 7.

² The value of this check upon expenditures is greatly lessened by the fact that the President cannot veto particular items of an appropriation bill, but must accept or reject the bill as a whole.

tion as to time, and payable out of any money in the treasury not otherwise appropriated. All other appropriations are made annually.

The constitution requires that "a regular statement and account of the receipts and expenditures of all public

Millions 25 50 75 100 125 150 175 200 225



OBJECTS OF FEDERAL EXPENDITURES, 1909

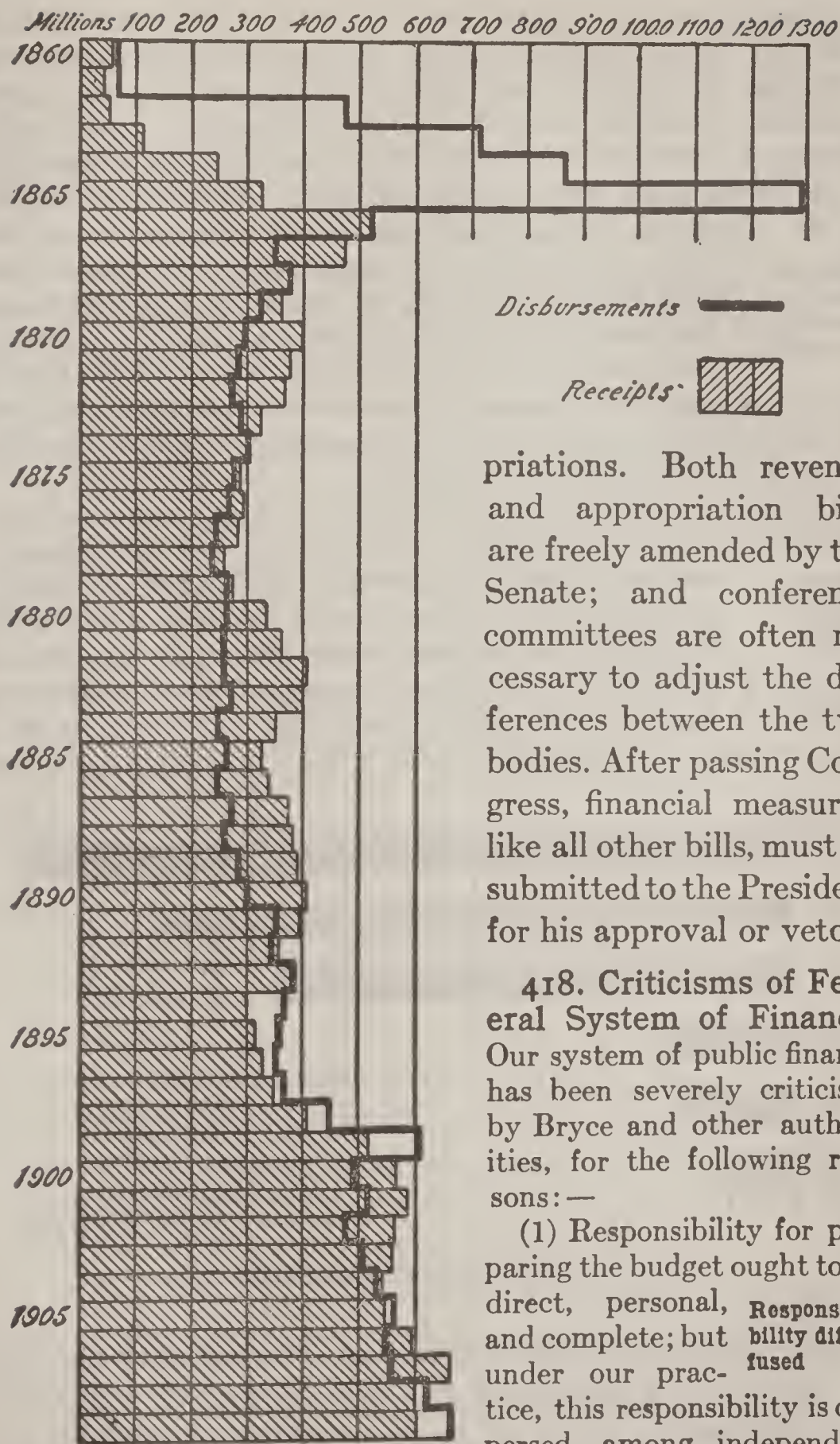
moneys shall be made from time to time.”¹ In accordance with this provision, the Secretary of the Treasury lays before Congress at the beginning of each regular session a report upon the national finances giving: (1) a condensed statement of receipts and expenditures for the last fiscal year; (2) an estimate of the revenues and expenditures for the fiscal year about to be entered upon; (3) an outline of the fiscal policy desired by the administration. The Secretary’s report is submitted to the Speaker of the House, who refers it to the appropriate committees.

Real control of financial policy is thus vested in the congressional committees; for while they may take the report of the Secretary of the Treasury as a basis for legislation, they are under no legal obligation to do so, and the recommendations of that official are often materially modified or even entirely rejected. The most important of the House committees is that on ways and means, which has almost exclusive control of plans for raising revenue. Only second in importance to the ways and means committee is the committee on appropriations. Formerly this committee reported all appropriation bills, but at present it reports only six bills, namely, the sundry civil bill; the legislative, executive, and judicial bill; the District of Columbia, pension, fortifications, and deficiency bills. Each of the other six appropriation bills is assigned, respectively, to the House committee having charge of the subject-matter in question.²

Bills thus prepared are submitted to the House, and if passed by that body go to the Senate, where bills for raising revenue are referred to the finance committee, and appropriation bills to the committee on appro-

¹ *Constitution*, Art. 1, Sec. 9, Par. 7.

² Thus the committee on foreign affairs has charge of the appropriation bill for the consular and diplomatic service; the committee on military affairs, of the bills for the support of the army, and for the support of the Military Academy; the committee on naval affairs, the bill for the naval service; committee on Indian affairs, the bill for the Indian service; committee on post office and post roads, the bill for the postal service; the committee on agriculture, the bill for the Department of Agriculture.



priations. Both revenue and appropriation bills are freely amended by the Senate; and conference committees are often necessary to adjust the differences between the two bodies. After passing Congress, financial measures, like all other bills, must be submitted to the President for his approval or veto.

418. Criticisms of Federal System of Finance. Our system of public finance has been severely criticised by Bryce and other authorities, for the following reasons:—

(1) Responsibility for preparing the budget ought to be direct, personal, and complete; but under our practice, this responsibility is dispersed among independent committees of coördinate authority. The twelve annual

FEDERAL REVENUES AND EXPENDITURES, 1860-1909

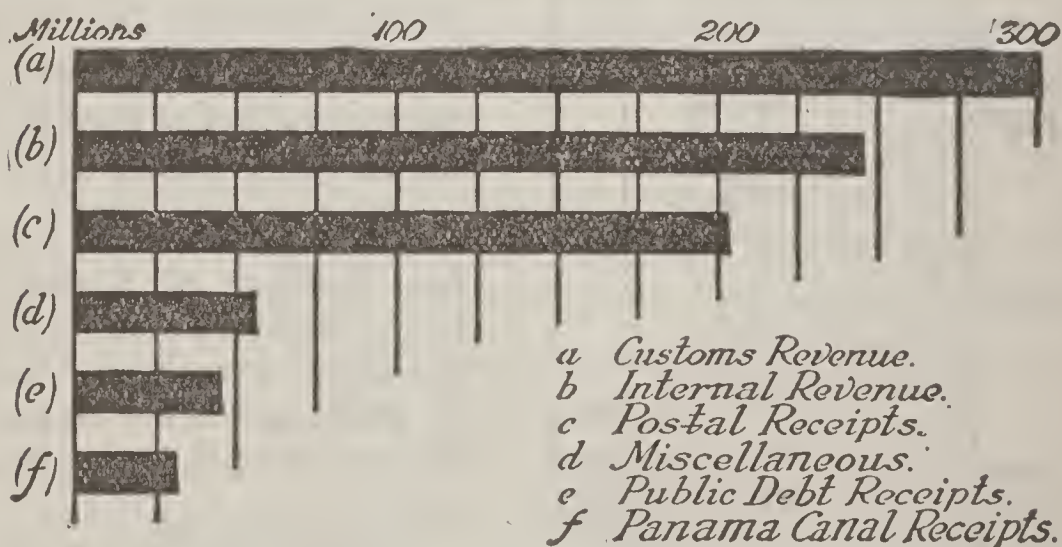
appropriation bills enacted by Congress are prepared by seven different House committees, each of which is independent of the rest, and all of which may ignore entirely the ways and means committee, whose business it is to raise the revenue, as well as the Secretary of the Treasury, whose duty it is to suggest a fiscal plan.

(2) There is no direct relation between the amount proposed to be raised and the amount proposed to be spent in any one year. In most foreign countries, as in the case of our own States and cities, the necessary expenditures are calculated beforehand as closely as possible, and taxes are then levied to supply the necessary funds. Federal finance reverses this process; it first provides revenue without any special reference to the needs of the country, and then considers ways of expending the money raised.

(3) The executive branch of the government has insufficient authority in financial affairs. The Secretary of the Treasury, unlike the British Chancellor of the Exchequer, does not submit his financial projects in the form of bills which he defends on the floor of the House; he may only recommend measures for the secret consideration of committees. Moreover, since the President cannot veto particular items in appropriation bills, his authority over fiscal legislation is limited.¹

Expenditures and revenues not correlated

Lack of executive control



SOURCES OF FEDERAL REVENUES, 1909

419. Sources of Federal Revenue. The ordinary revenues of the federal government are derived mainly from three

¹ By an act passed in 1909, it is made the duty of the Secretary of the Treasury to compare the estimates of expenditure for the ensuing fiscal year with the probable revenues for the same period. In case the Secretary's estimates show a probable deficit, it is the duty of the President to recommend methods by which the deficit may be met.

sources, — customs duties, internal revenue, and postal service. Leaving postal receipts out of the question (since the cost of the postal service exceeds the receipts), nearly ninety per cent of the national income is derived from customs duties and internal revenue.

Customs,
excises,
postal
receipts

420. **Taxing Power of the National Government.** The constitution delegates the taxing power to Congress in the following terms: "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."¹ The taxing power thus vested in Congress extends to all persons and property within the jurisdiction of the United States. The power may be exercised for any of three purposes — payment of debts, common defense, and general welfare — objects as broad as the needs of government can possibly be.

Taxing
power

The power of Congress to tax is subject to four important limitations, two of which restrict the objects to be taxed, while two apply to the method of levying taxes. These are as follows: —

Limitations

(1) No tax or duty may be levied on articles exported from any State.²

Export
duties

(2) Congress may not lay a tax upon the agencies or instrumentalities through which the State governments perform their functions. Thus Congress cannot tax State property, or incomes from State securities, or the salary of a State judicial officer, or the property or revenues of municipalities.³

Govern-
mental
agencies

(3) Direct taxes must be apportioned among the several States in accordance with their population.⁴ "Thus, if

¹ *Constitution*, Art. I, Sec. 8.

² *Ibid.*, Art. I, Sec. 9, Par. 5.

³ *Collector v. Day*, 11 Wall. 118; *U. S. v. Railroad Co.*, 17 Wall. 322; *Pollock v. Farmers' Loan and Trust Co.*, 157 U. S. 429.

⁴ *Constitution*, Art. I, Sec. 9, Par. 4.

Congress proposes to lay a direct tax, it must first fix the whole amount of money to be raised in this manner; and this amount it must divide among all the States in sums proportioned to the number of inhabitants in each. That is to say, the same process must be gone through with which is adopted in ascertaining the number of Representatives to which each State is entitled.”¹

(4) Finally, all duties, imposts, and excises must be uniform throughout the United States;² that is, the rate fixed upon any article must be the same in all the States. **Rule of uniformity** “It is not necessary that all articles should be subjected to the same burden, or that all upon which the tax is laid should bear the same rate. But when a rate has been determined for any one subject, that must be retained for the same species in all the States.”³

421. Import Duties as a Source of Revenue. Prior to the Civil War, the federal government derived nearly all of its income from import duties;⁴ while at the present time a little more than half of the net revenue is derived from this source. Import duties⁵ may be defined as taxes imposed upon articles brought into the United States from foreign countries. Since the States are forbidden to levy imposts, this form of tax is reserved exclusively to the federal government.

Import duties are of two kinds, specific and *ad valorem*. Specific duties are those which are laid according to weight or number, without reference to the value of the article; while *ad valorem* duties are those levied in proportion to value. On some articles both forms of duty are levied.⁶

¹ Pomeroy, J. N., *Constitutional Law*, sec. 279.

² *Constitution*, Art. 1, Sec. 8, Par. 1.

³ Pomeroy, J. N., *Constitutional Law*, sec. 280.

⁴ In 1860, for example, customs receipts amounted to \$53,178,512, while the total net revenues were only \$60,056,755.

⁵ Customs duties include both import and export duties; but taxes upon exports have been abandoned by all leading countries, and are prohibited by the federal constitution.

⁶ The great advantage of the *specific* duty is the ease with which it is administered, since it merely involves weighing or counting. The *ad valorem* duty is fairer in that the duty is proportioned to the value of the article and decreases if the value falls; on the other hand, the *ad valorem* duty demands more administrative machinery and often leads to fraudulent invoices.

The administration of customs duties is in charge of the Secretary of the Treasury, one of the assistant secretaries having immediate charge of the customs department. The entire country is divided into about one hundred and fifty districts for the collection of customs. In each district there is a collector, who is aided by a surveyor, appraiser, and a staff of clerks, examiners, inspectors, and store-keepers.¹

Collection

422. Import Duties as a Form of Tax. The advantages of import duties as a form of tax are, that they are exceedingly productive, inexpensive to administer, and collected with comparative ease (being ordinarily paid by the importer and shifted to the consumer in the form of a higher price).

Advantages

Considered strictly as a tax, they are open to serious objections:

(1) They are not proportioned to the wealth of the taxpayers, but impose a disproportionate burden upon persons of moderate income. To yield a large revenue, import duties must be laid upon articles of general consumption; but for these commodities persons of moderate means spend a greater proportion of their incomes than do the wealthier classes.²

Disadvantages—inequality of burdens

(2) Customs revenues are inelastic, since duties cannot be readily changed to meet the changing needs of government. Frequent revision of tariff rates means injury to business, and for this reason the federal government has for years collected duties far in excess of its needs, thus encouraging wasteful expenditures.

Lack of elasticity

(3) Import duties are an uncertain form of tax, likely to yield least when the government need is greatest. In time of war, for example, foreign trade is usually curtailed, and hence the revenues from duties decrease. Again, in time of industrial depression the receipts from this source generally decrease to a marked extent.³

Uncertainty

423. General Characteristics of Excise Taxes. Excises may be defined as taxes levied upon the consumption,

¹ Nine tenths of the entire imports come through six ports of entry — New York, Boston, Philadelphia, Baltimore, New Orleans, and San Francisco.

² The import duty on sugar, confectionery, and molasses, for the year 1909 amounted to \$56,406,484; since it is not probable that the man with a \$10,000 income consumes twenty times as much of this product as the man with a \$500 income, it is evident that the burden of this tax was not proportioned to the ability of the taxpayer.

³ In 1893, for example, the customs revenue amounted to \$203,355,017, but in the following year it fell to \$131,818,531, the decrease being largely due to the prevailing hard times.

manufacture, or sale of commodities within a country.¹ Like customs duties, excises are commonly borne by the consumers, who have to pay higher prices for the articles taxed. While somewhat inelastic and uncertain in character, they form a more stable and readily adjusted source of income than customs duties. Like the latter, they are based upon no rule of apportionment or equality, but are fixed charges laid on commodities without regard to the amount of property belonging to those who pay them. This unequal burden of taxation is not deemed objectionable in case of excises, since this form of tax is levied upon liquors, tobacco, and other commodities whose consumption is ordinarily discouraged on economic and social grounds.

424. History of Excise Taxation. Excise taxes were first imposed in 1791, when a tax was laid upon distilled spirits to obtain money with which to pay the Revolutionary debt.² Other excises were levied in 1794, including taxes on carriages,³ on the sales of liquors, on auction sales, on the manufacture of snuff, and the refining of sugar. These early excises were exceedingly unpopular and were repealed in 1802. The War of 1812 led to the imposition of new excises, which were declared to be temporary war taxes, and were abolished after 1817.

With the outbreak of the Civil War, it became necessary to resort to excises upon an unprecedented scale.⁴ In 1866, the receipts from internal revenue were \$309,226,813; and the total internal revenue receipts for the four years from 1863 to 1866 amounted to \$666,072,950. After the war, most of the excises were repealed, but the excise duties on distilled and fermented liquors and tobacco were retained, and have since formed a permanent feature of our internal revenue system.

¹ The term "excises" also includes licenses to pursue certain trades or callings, and to deal in certain commodities.

² This tax in 1794 caused the insurrection in southwestern Pennsylvania, known as the "Whiskey Rebellion."

³ The constitutionality of the tax upon carriages was upheld by the Supreme Court (1796) in the case of *Hylton v. United States* (3 Dall. 171; Thayer's Cases, II, 1315).

⁴ The act of July 1, 1862, imposed duties upon liquors, tobacco, carriages, yachts, and many other articles; upon auction sales, railroads, steamboats, banking institutions, and insurance companies; upon the salaries of federal officers; upon advertisements, incomes, and legacies; and upon many legal and commercial transactions.

At the outbreak of the Spanish-American War (1898), a war revenue bill was passed. Nearly all the duties on tobacco and fermented liquor were doubled, and excises were levied upon many other articles; also upon a large number of commercial transactions involving the use of documents (such as bank checks, express and freight receipts, telegraph messages, and the like); together with a tax upon inheritances.¹ Under this act the receipts from internal revenue increased from \$146,688,574 in 1897 to \$273,437,162 in 1899. In 1901, the internal revenue receipts reached the highest point since 1866, yielding \$307,180,664. In 1901-02, acts were passed repealing the additional excises necessitated by the war.

Spanish-
American
War

Since the Civil War, the normal federal revenue has been made up of about one half customs duties and one half internal revenue duties. At the present time the receipts from internal revenue amount to about \$250,000,000 annually.

Present
excise
receipts

425. Administration of Excise Taxes. The administration of excise taxes is supervised by the commissioner of internal revenue, who is one of the bureau chiefs of the Treasury Department. The entire country is divided into a large number of districts, in each of which is a collector responsible for the enforcement of the revenue laws in his district. Special officers are employed to detect attempted evasions of the law.

Revenue
districts

Excise taxes are collected in two ways: (1) By requiring the producer or seller of such commodities as liquor or oleomargarine to pay a license fee for the right to carry on his occupation, whereupon a certificate is issued, which must be exposed in his place of business. (2) In addition to the license fee, each unit of the article is taxed by means of revenue stamps which must be pasted upon packages in such a way as to be necessarily broken when the package is opened.

Collection
of excises

426. Characteristics of Income Taxes. Income taxes

¹ During the Civil War the federal government had levied a tax on inheritances (1864). Under this law the rate was made progressive, from one to six per cent. The law of 1898 established a minimum rate of three-fourths per cent and a maximum rate of fifteen per cent, the rate varying according to the amount of the bequest and the degree of blood relationship. Under both laws, small estates were exempt.

are those levied in proportion to the income of the taxpayer.¹ Theoretically, this is one of the most just forms of tax, since it conforms more nearly to the ideal that taxes should be proportioned to the ability of the taxpayer; and income is conceded to be the best single indication of taxpaying ability. Moreover, the income tax cannot be easily shifted, but is generally borne by the persons on whom it is assessed. It is also an elastic form of tax, and can be readily adapted to revenue needs. It has proven very successful in other countries; but under our form of government it is not practicable for the States, since if one commonwealth levies an income tax, its wealthy citizens may escape it by acquiring a legal residence in a neighboring State. Hence incomes can be successfully taxed only under federal law; but, as will appear later, there are constitutional grounds which prevent a federal income tax.

427. History of Federal Taxation of Incomes. On two different occasions the federal government has attempted to levy income taxes, the first in 1861–1865 as a war measure, the second in 1894 as a means of meeting a prospective deficit resulting from a lowering of import duties.

By a series of acts passed in 1861–1865, Congress levied a general income tax, the rate fixed in 1862 being three per cent on all incomes exceeding \$600 and less than \$10,000, and five per cent on incomes over \$10,000.² Assessments were made on the basis of written declarations by the taxpayers, subject to correction by the assessors. The income tax was abolished in 1872, having yielded a total revenue of \$347,000,000 during the ten years it was in force.

This tax was deemed by Congress an indirect tax, and hence the rate was made uniform throughout the United States. This was in accordance with the definition given by the Supreme Court in *Hylton v. United States*,³ according to which the only direct taxes within the meaning of the constitution are capitation taxes and taxes upon real estate. Hence, the income tax, not being a direct tax, was not to be pro-

¹ See Section 252.

² Later acts increased the rate to five per cent on incomes from \$600 to \$5000, and ten per cent on incomes above \$5000.

³ 3 Dall. 171; Thayer's Cases, II, 1315.

portioned among the States according to population, but, like an excise or a customs duty, was to be levied at a uniform rate.

The view taken by Congress was sustained by the Supreme Court in the leading case of *Springer v. United States*,¹ in which the court declared the income tax to be an indirect tax in the constitutional sense. It was therefore properly levied at a uniform rate, and the constitutionality of the law was affirmed.

Constitu-
tionality
affirmed

In 1894, to offset the prospective loss of revenue from the lower rates under the Wilson-Gorman Tariff Act, Congress enacted a second income-tax law. This levied a tax of two per cent on all incomes, from whatever source derived, in excess of \$4000.²

Income tax
of 1894

The constitutionality of this law was attacked in the case of *Pollock v. Farmers' Loan and Trust Company*.³ In an opinion rendered by a divided bench, the Supreme Court declared the law unconstitutional (1895). The grounds for this decision were: (1) that a tax upon the income of real or personal property is a direct tax within the meaning of the constitution, and therefore unconstitutional unless imposed by the rule of apportionment; (2) that a tax upon income from State and municipal bonds is unconstitutional, this being a tax upon the instrumentalities of the State governments.

Constitu-
tionality
denied

This definition of the income tax as a direct tax is in accordance with the views of writers on economics; but it directly reverses the decision in *Springer v. United States* (in which the Civil War income tax was declared to be an indirect tax and its constitutionality upheld); and it also contravenes the classification of taxes uniformly followed in earlier cases. The practical effect of the decision is to make it impossible for the federal government to use this form of taxation, since an income tax levied upon the basis of population would be highly unjust.⁴ Only by a constitutional amendment,⁵ or by a reversal of the latest decision of the Supreme Court, would a federal income tax become feasible.

Conse-
quences
of decision

¹ 102 U. S. 586; Thayer's Cases, II, 1321.

² This high limit of exemption was especially favorable to the South and West; from New York, Pennsylvania, and New England there were but five votes in the House in favor of the law.

³ 157 U. S. 429; 158 U. S. 601.

⁴ This is because the sectional inequalities of population do not correspond with sectional inequalities of wealth. The more populous States are also the more wealthy, but the per capita wealth of such commonwealths as New York and Pennsylvania, for example, is much greater than that of such States as Texas and Iowa. Hence, an apportioned income tax would impose an unequal burden upon the agricultural States of the South and West.

⁵ Such an amendment is now before the States for approval.

428. Direct Taxes levied by the Federal Government. On five occasions Congress has exercised its constitutional power to levy direct taxes proportioned among the States according to population. The first tax of this kind was levied in 1798, three others during the War of 1812, and one in 1861. The first four of these were laid upon real estate and slaves, the act of 1861 upon real estate alone. Except in the greatest emergency, it is unlikely that Congress will again levy direct taxes, since under the rule of apportionment the burden of such taxation weighs most heavily upon the poorer States.

429. Anticipatory or Extraordinary Revenues. In addition to the revenue secured from the sources already described, the federal government may obtain **Borrowing power** funds through the use of its credit. The constitution vests in Congress power "to borrow money on the credit of the United States,"¹ thus conferring the borrowing power in the broadest possible terms, so that it may be commensurate with the needs of government.

Governments generally borrow money by issuing bonds, bills of credit (such as treasury notes), or other evidences of indebtedness. But Congress is not limited to **Methods of borrowing** methods of borrowing which are so clearly and directly adapted to the end in view; it may adopt any means it deems conducive to the efficient execution of the power, provided only that they are appropriate to the end, and legitimate, that is, within the scope of the constitution. Thus Congress may charter a federal bank, this having been held by the Supreme Court to be a necessary and proper means of carrying on the fiscal operations of government.² Moreover, as an incident of the power to borrow money and provide a currency, Congress may establish a system of national banks, such as exists to-day. Not only

¹ *Constitution*, Art. I, Sec. 8, Par. 2.

² On the theory that the credit of the government is thereby strengthened and its borrowing powers enlarged. *McCulloch v. Maryland*, 4 Wheat. 316; *Thayer's Cases*, I, 271; *Osborne et al. v. United States Bank*, 9 Wheat. 738.

may Congress issue bills of credit, such as treasury notes, but as an incident of the borrowing power, Congress may make such notes a legal tender for all public and private debts.¹

430. **Bond Issues.** In negotiating public loans, governments usually proceed by one of two methods. The first is to prepare the bonds or other evidences of indebtedness, fixing all the conditions (such as the amount, time, and rate of interest), and then offer the securities to all buyers at the same price. Frequently bonds are sold in this way by popular subscription; that is, certain places are designated for the reception of subscriptions, and the bonds are then sold to purchasers at a stated price.

Negotiation
— first
method

The second and more common method of marketing bonds is for the government to advertise that bids for a certain amount of bonds are desired. Bankers and capitalists then compete for the privilege of taking the bond issue in whole or in part. The bidders offer to provide the money at a certain rate of interest, or if the rate of interest and the amount of the bonds have been determined, offer to buy them at a certain rate, quoted as so much per hundred. The most favorable terms offered are then accepted, and upon delivering the money to the government, the purchasers receive the bonds.²

Second
method

Fiscal considerations will determine the time for which the bonds shall run, the amount, and the rate of interest.³ If intended for popular subscription, the bonds must be in small amounts; otherwise the units may be larger. If the rate of interest offered is too low, the bonds will not sell except below par. Both principal and interest of bonds are payable in gold.

Maturity,
and interest
rate

¹ *Knox v. Lee*, 12 Wall. 457; *Thayer's Cases*, II, 2237; *Juilliard v. Greenman*, 110 U. S. 421; *Thayer's Cases*, II, 2255.

² The first of these methods has the advantage of interesting many individual citizens in the loan; the second method secures to the government the advantage of competition among those having money to loan.

³ During the Civil War, bonds were issued at five and six per cent interest, the total amount being \$1,049,000,000.

431. Short-Time Loans. Bonds are generally issued for loans intended to extend over a considerable number of years; but for short-term loans some variety of **Treasury notes** treasury notes is generally issued. Thus during the Civil War, the government secured short-term and temporary loans (amounting in all to \$1,098,000,000) through the issue of a variety of interest-bearing notes.¹ In addition to these notes, what was in reality a forced loan was secured through the issue of \$431,000,000 of non-interest-bearing, legal-tender notes, not redeemable in specie.

432. History of the National Debt. The constitution had expressly provided that the debts of the Confederation government (amounting to about \$54,000,000) should be valid **Assumption** as against the new federal government.² Under the influence of Hamilton, Congress also assumed the war debt incurred by the States during the Revolution (amounting to about \$21,000,000); and thus the new government began its career with a national debt of about \$75,000,000.

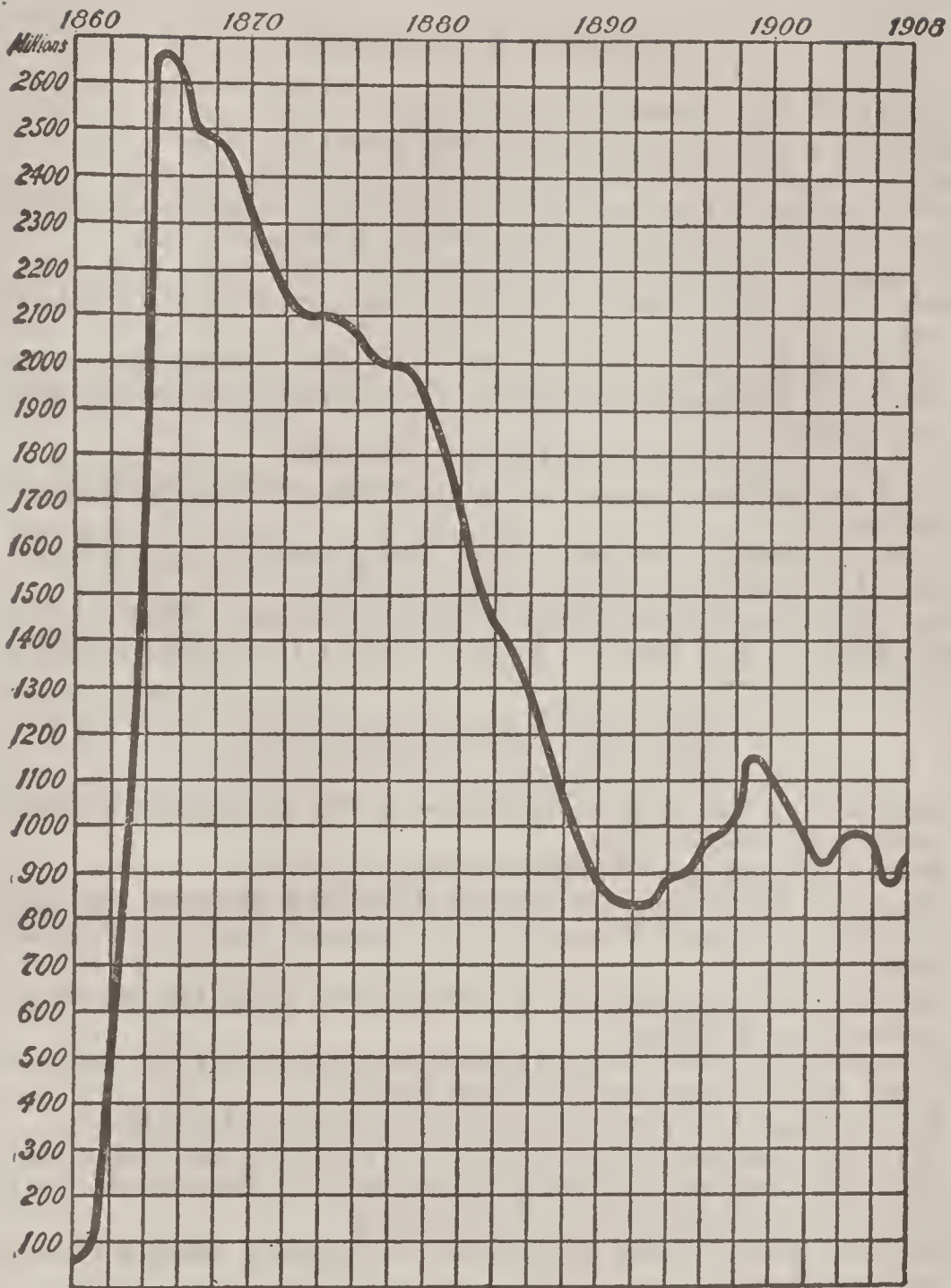
Hamilton considered a public debt a source of strength to government, on the theory that the holders of bonds would be necessarily interested in the stability of the new government. Hence the Federalists when in power did not **Policies of Hamilton and Jefferson** aim to rapidly extinguish the debt. But Jefferson entertained a different conception, holding that the public debt was something to be paid as quickly as possible; and this has since been the prevailing theory. From Jefferson's administration, the debt was steadily reduced until the War of 1812, when it increased to nearly \$125,000,000. After the war, it again decreased, until by 1836 the national debt was practically paid, and the government distributed a surplus of about \$28,000,000 to the States.

The Mexican War involved an increased indebtedness of about \$49,000,000; but until the Civil War the national debt remained a comparatively small one, amounting at the outbreak of the war to about \$60,000,000. By 1862 it had increased to over \$500,000,000; and in 1865 it reached a total of \$2,674,815,856. **Debt prior to Civil War**

After the war the country entered upon the tremendous task

¹ Including treasury notes, certificates of deposit, and compound interest notes. The rate of interest varied from five per cent to seven and three-tenths per cent.

² Constitution, Art. VI, Par. 1.



THE NATIONAL DEBT, 1860-1908

of paying off the debt, and in twenty-five years, \$1,784,031,486 of the public debt was paid, leaving an indebtedness of \$890,784,370.¹ The falling off in revenues during the decade from 1890-1900, together with the expenses of the Spanish-American War, has somewhat increased the debt which on July 1, 1909, amounted to \$1,023,861,530,¹ or a per capita indebtedness of about eleven dollars.

Debt since
Civil War

¹ The debt less cash in the treasury.

GENERAL REFERENCES

- Adams, H. C., *The Science of Finance* (1905).
 Ashley, R. L., *The American Federal State* (1903), ch. xxv.
 Beard, C. A., *American Government and Politics* (1910), ch. xviii.
 ——— *Readings in American Government and Politics* (1910), ch. xviii.
 Blackmar, F. W., *Economics for High Schools* (1907), ch. xxxii.
 Bryce, James A., *The American Commonwealth* (1907), i, ch. xvii.
 Daniels, W. M., *The Elements of Public Finance*, pp. 30-38, 167-170, 186-191.
 Dewey, D. R., *Financial History of the United States* (1903), chs. iii, xxi.
 Ely, R. T., and Wicker, Geo. R., *Elementary Principles of Economics* (1904), pp. 327-364.
 Hart, A. B., *Actual Government* (1903), pp. 394-429.
 James, J. A., and Sanford, A. H., *Government in State and Nation* (1903), ch. xvii.
 McClain, E., *Constitutional Law in the United States* (1905), pp. 137-142.
 Plehn, C. C., *Introduction to Public Finance* (1897).
 Reinsch, P. S., *Readings on American Federal Government* (1909), ch. viii.
 Woodburn, J. A., *The American Republic and its Government* (1908), pp. 287-298.

QUESTIONS AND EXERCISES

1. Report upon the financial difficulties of the government under the Articles of Confederation.
2. Prepare a report upon Hamilton's financial policy.
3. Prepare a report upon the systems of taxation employed during the Civil War. (Consult Dewey, D. R., *Financial History of the United States*, ch. xiii.)
4. Are there any limitations on the purposes for which the federal government may levy taxes?
5. If both the United States and a State government tax the same property, which claim must be first satisfied?
6. Has the federal government any exclusive powers of taxation?
7. May State governments tax corporations created by the United States? May States tax the incomes of federal officials? The income derived from United States bonds? (Section 446.)
8. May the United States government tax legacies? May a State tax imported goods?
9. Discuss the arguments in favor of a federal income tax.
10. Discuss the proposed income tax amendment to the federal constitution. (United States Statutes at Large, 61st Congress, 1st Session, p. 185; Kaye, P. L., *Readings*, p. 434.)
11. May Congress grant to certain individuals the privilege of importing goods free, while compelling others to pay duties? May Congress provide a lower rate of duties on goods shipped to Boston than on similar goods shipped to New York?
12. What imports are taxed heavily for the sake of revenue only? Does the chief burden fall on articles of luxury or necessity?
13. Describe the collection of the federal revenue. (Dewey, D. R., *Financial History of the United States*, pp. 488-492.)
14. Describe the process of enacting a tariff bill. (Dewey, D. R., *Financial History of the United States*, pp. 478-483.)

15. What were the revenues for the last fiscal year? The expenditures? The chief items under each head?
16. Account for the enormous growth of governmental expenditures. Is this increase justifiable? (Reinsch, P. S., *Readings*, pp. 355-359.)
17. Expenditures for the army, fortifications, navy, and pensions comprise what per cent of the total federal expenditures? Is this excessive?
18. Describe the process of passing appropriation bills. (Dewey, D. R., *Financial History*, pp. 483-488; Reinsch, P. S., *Readings*, pp. 301-355.)
19. Summarize the criticisms upon our system of congressional finance. How can these defects be remedied? (Bryce, James, *The American Commonwealth*, I, pp. 174-182; Reinsch, P. S., *Readings*, pp. 317-320.)
20. Discuss the reasons given by President Cleveland for his veto of the River and Harbor Bill in 1896. (Reinsch, P. S., *Readings*, pp. 359-361.)
21. May Congress distribute surplus revenue among the States? Has this ever been done?
22. Report upon the custody of the public funds. (Kinley, David, *The Independent Treasury of the United States*; Dewey, D. R., *Financial History*, pp. 492-494.)
23. Are there any limitations on the borrowing power of the United States?
24. May Congress lower the rate of interest on government bonds before their maturity?
25. What is meant by the statement that bonds are quoted at 106? At 98? Examine your daily papers for the current price of United States bonds. How do you account for difference in these prices?
26. What is a sinking-fund? What is meant by funding the debt?

CHAPTER XXX

COINAGE AND CURRENCY

433. **Origin and Functions of Money.** Money may be defined as that which serves as a medium of exchange throughout the community, being accepted in final discharge of debts and in full payment for commodities, without reference to the credit of the person who offers it.¹

The earliest exchanges were effected by barter, but the serious disadvantages of this method led to the adoption of a generally desired commodity as a common medium of exchange. Cattle, furs, tobacco, and other commodities have served in primitive societies as a medium of exchange; but these crude forms of money were gradually supplanted by the precious metals, gold and silver.²

Money owes its origin to the action of individuals, but governments gradually asserted their control over money in three ways: (1) by selecting the commodity which had previously served as a medium of exchange between individuals, and making it the means of payment for government fines and taxes; (2) by establishing systems of public coinage and prohibiting coinage by private individuals; (3) by making the government coins a legal tender in discharge of all debts.

Money serves three important functions: (1) as a medium of exchange, obviating the difficulties of barter; (2) as a measure of values, that is, a common denominator in which the exchange values of other commod-

¹ Definition adapted from Walker, F. A., *Money in its Relations to Trade and Industry*, p. 4.

² The characteristics of a good money material, possessed in largest degree by the precious metals, are: (1) commodity value, arising from general desirability, (2) high specific value, (3) portability, (4) durability, (5) divisibility, (6) convertibility, (7) uniformity of value, (8) cognizability, (9) homogeneity.

ities are reckoned; (3) as a standard of deferred payments, that is, the measure of debts whose payment is postponed to a future time.

434. **Monetary System of the United States.** Power to regulate the monetary system of the United States is vested exclusively in Congress, the States being forbidden to create either a metallic or a paper currency.

Financial
powers of
Congress

The federal constitution confers upon Congress the power "to coin money and regulate the value thereof and of foreign coin";¹ and by express provision the States are forbidden to coin money, emit bills of credit, or make anything but gold or silver coin a legal tender in payment of debts.² Under the interpretation of the Supreme Court, Congress is thus vested expressly with the power to create metal money and regulate its value; vested impliedly with power to create paper money and regulate its value; and vested impliedly with power to make anything it wishes legal tender in payment of any debt.³

Currency — a term which includes all money authorized by the government — is of two kinds, metallic and paper. The metallic currency of the United States now consists of gold coins, silver dollars, and subsidiary coins; the paper currency of gold certificates, silver certificates, United States notes, national-bank notes, and treasury notes (Act of 1890). Thus, in all, eight kinds of money or currency are authorized, three of which — gold coins, silver dollars, and United States notes — are full legal tender; while the subsidiary coins are legal tender only in limited amounts.⁴

Kinds of
money

435. **Volume of Money.** The entire volume of money in the United States on July 1, 1909, is shown by the table on next page.

¹ *Constitution*, Art. I, Sec. 8, Par. 5.

² *Ibid.*, Art. I, Sec. 10, Par. 1.

³ *Juilliard v. Greenman*, 110 U. S. 421; *Thayer's Cases*, II, 2255.

⁴ Subsidiary coins include the half-dollar, quarter, and dime, which are legal tender to the amount of ten dollars; and the so-called minor coins, the nickel and cent, which are legal tender to the amount of twenty-five cents.

<i>Kind of Money</i>	<i>In Treasury</i>	<i>In Circulation</i>	<i>Total</i>
Gold coin	227,698,852	599,337,698	827,036,550
Silver dollars	14,356,495	71,987,900	86,344,395
Subsidiary coins	27,076,748	132,331,798	159,408,546
Gold certificates		815,005,449	815,005,449
Silver certificates		477,717,324	477,717,324
United States notes	6,562,749	340,118,267	346,681,016
Nat'l bank notes	24,381,268	665,538,806	689,920,074
Treasury notes, Act of 1890	11,585	4,203,415	4,215,000
Grand total	300,087,697	3,106,240,657	3,406,328,354

436. History of Metallic Currency to 1873. During the Revolutionary period, the colonies relied for their metallic currency chiefly upon English, French, and Spanish coins; and various units of account were employed in different sections of the country. Under the Articles of Confederation, the currency remained in a chaotic condition, for the States retained the right to coin money.¹

The federal constitution gave the national government entire control of the currency, and in 1792 Congress passed the first coinage act. This law provided for the free coinage of gold and silver at the ratio of 15 to 1, a proportion which approximated the bullion values of the metals. The monetary unit was the gold dollar consisting of $24\frac{3}{4}$ grains of pure gold, and the silver dollar containing fifteen times that amount, or $371\frac{1}{4}$ grains of pure silver. Eagles, half and quarter eagles, and silver dollars were to be coined, and were made full legal tender.

The mint ratio of 15 to 1 thus established between gold and silver soon proved to be an undervaluation of gold in the world's market; in other words, within a few years a pound of gold was worth, as bullion, more than fifteen pounds of silver. Hence little gold was brought to the mint, and during the period from 1804 to 1834, only about nine million dollars of gold was coined. Gold disappeared from circulation owing to a monetary principle known as Gresham's Law — that "bad money tends to drive out good, but good money cannot drive out bad." In other words, if both metals are legal tender, people will pay their debts with the cheaper money, the dearer money being hoarded or exported.

As a result of this discrepancy between the mint and the mar-

¹ Although Congress had the right to regulate the value of coins struck either by its authority or that of the respective States.

ket ratios of gold and silver, a new coinage act was passed in 1834, which reduced the weight of the gold dollar from 24.75 to 23.22 grains. Since the weight of the silver dollar remained the same (371.25 grains), this established a ratio of approximately 16 to 1. This mint ratio in turn soon proved to be an undervaluation of silver as compared with the market ratio;¹ that is, sixteen ounces of silver became worth more in the market than one ounce of gold. In accordance with Gresham's Law, silver coins then disappeared from circulation, and after 1840 silver dollars were rarely seen.

Coinage Act
of 1834

After 1861 specie payments were suspended; large quantities of paper money were issued, and gold and silver disappeared from circulation, or circulated only at a heavy premium.

Suspension
of specie
payments

437. History of Metallic Currency, 1873-1900. In 1873 an act was passed which discontinued the coinage of the silver dollar of 371¼ grains, and established as the sole unit of value the gold dollar containing 23.22 grains of pure gold. Silver was thus demonetized (that is, no longer received by the government to be coined into money); and the country was placed upon a monometallic (one-metal) basis, with free coinage of gold only. This action in combination with other causes² led to a rapid decline in the value of silver as compared with that of gold.

Demonetiza-
tion of silver

This demonetization of silver attracted little attention in 1873; but as silver began to decline rapidly in price, those who were interested in its sale as a commodity, together with many who believed the circulating medium unduly restricted if limited to one metal, united in a demand for the renewed free coinage of silver. The more radical friends of silver referred to the demonetization act as "the crime of '73"; and the period from 1873 to 1900 — described by one writer as the "battle of the standards" — was one of constant agitation, discussion, and legislation with reference to the money question.

Battle of the
standards

438. The Coinage Act of 1878. The demand for the renewed coinage of silver was in part recognized by the Bland-Allison Act of 1878. As originally passed by the House, this act provided for the free and unlimited coinage of silver at the ratio of 16 to 1; but as amended by the Senate, the volume of silver coinage was restricted. The act provided that the

Bland-
Allison Act

¹ The discovery of gold in California in 1848, and the subsequent large production of gold in California and Australia, lowered the value of that metal as compared to silver.

² Especially the demonetization of silver by Germany in 1871, the limitation placed upon silver coinage by the Latin Union in 1873, and the discovery of large silver-mines in Nevada.

Secretary of the Treasury should purchase silver bullion at the market price, to the amount of not less than \$2,000,000 nor more than \$4,000,000 per month; and the bullion thus purchased was to be coined into dollars which were to be full legal tender.

439. The Sherman Act and its Results. In 1890, the Bland-Allison Act was repealed and the Sherman Act passed, directing the Secretary of the Treasury to purchase 4,500,000 ounces of silver each month, paying for it with legal-tender treasury notes. These treasury notes were to be redeemed in either gold or silver coin at the discretion of the Secretary; but since the act declared it to be the policy of the United States to maintain the two metals on a parity with each other, this was interpreted by the Treasury Department as a virtual promise that the notes should be redeemed in gold, or its exact equivalent.

The resumption of specie payments January 1, 1879, had been accomplished by the accumulation in the treasury of a gold reserve of \$133,000,000 in excess of all liabilities. This sum, although slightly less than forty per cent of the outstanding United States notes, proved more than sufficient for redemption purposes. In the fourteen years from 1879 to 1892, only an insignificant amount of gold was paid out by the Treasury Department for redemption, owing to the fact that government credit and business conditions were such that few notes were presented.¹ No definite sum was required by law to be set aside as a gold reserve, but tradition and custom had fixed \$100,000,000 as the sum necessary to guarantee the redemption of the notes. The Sherman Act of 1890 increased the volume of outstanding legal-tender notes by over \$50,000,000 annually, without providing an additional gold reserve for redemption purposes. The Treasury Department was unable to increase the reserve from funds on hand, as government revenues were falling off, owing to the business depression which finally culminated in the panic of 1893.²

In June, 1893, the British government closed the mints of India to the coinage of silver, and the price of silver bullion declined rapidly. In the same year the gold reserve of the Treasury Department began to decline, since legal-tender notes were being presented in large amounts, owing to the doubt entertained by many people as to the ability of government to redeem them in gold. Thus in 1893, \$102,100,000 of legal-tender notes were presented for redemption, as compared

¹ The largest amount of notes redeemed in any one year prior to 1893 was in 1892, when notes to the amount of \$9,126,000 were presented.

² In 1890, the excess of revenue over expenditures was \$105,344,000, in 1892, \$9,914,000, in 1893, \$2,342,000, while in 1894 there was a deficit amounting to \$69,803,000.

with \$9,126,000 in the preceding year. The value of the bullion in the silver dollar in 1893 was only sixty cents, and had the Treasury Department redeemed legal tenders in silver, the probable result would have been immediate depreciation of the notes.

Under these conditions President Cleveland summoned Congress in special session (August, 1893); and a statute was passed repealing that part of the Sherman Act which provided for the monthly purchase of silver, thus putting an end to further issues of treasury notes. But much of the mischief had already been done, and during the years 1893-1896 the gold reserve was almost constantly below \$100,000,000. As the revenue from customs duties and excises had declined sharply, the Treasury found itself compelled to sell bonds in order to obtain gold with which to redeem notes. In all, \$260,000,000 of bonds were sold for gold, which in turn was quickly paid out in redemption of notes. But gradually the panic began to subside; business conditions improved, government revenues increased, and shortly after the presidential campaign of 1896, gold once more flowed freely into the treasury, and the crisis was passed.

Repeal
of silver-
purchasing
clause

440. Arguments for Bimetallism. The burning issue in the presidential campaigns of 1896 and 1900 was that of free coinage of silver at the old ratio of 16 to 1. The principal arguments urged by those who favored bimetallism¹ were: —

(1) The double standard gives a more stable money unit than the single standard, because a larger stock of metal is thereby made available for money. Prices will fluctuate less, for if one metal rises in value owing to a decreased production, the other metal will take its place, thus preventing a fall in prices.

Stable unit
of value

(2) There has been a general fall of prices in all gold-standard countries since 1873, and this has injured debtors by increasing the burden of their debts. In other words, a debt — such as a mortgage — contracted in money of relatively low purchasing power must be repaid in dollars whose purchasing power has greatly increased.

General
decline
in prices

¹ Three conditions are essential to bimetallism: (1) two metals; (2) free (unlimited) coinage of both at a ratio fixed by law; and (3) both metals full legal tender in payment of debts.

(3) The world's stock of gold is not sufficient for the money demand of the world, and hence gold monometallism means a continuous fall of prices, and a constantly increasing burden upon the debtor class.¹

441. Arguments for Monometallism. To these arguments in favor of the free coinage of silver the monometallists replied: —

(1) National bimetallism is impossible, the so-called double standard being merely an alternating standard. Unless the legal ratio between gold and silver exactly coincides with the market ratio, that is, unless the mint valuation of each metal be the same as the market value of the bullion, the cheaper metal will be used as money in accordance with Gresham's Law. This was the experience of the United States after the acts of 1792 and 1834, and has been the experience of all other countries under bimetallism.²

(2) The proposed legal ratio of 16 to 1 greatly overvalues silver as compared with the market ratio of 30 to 1.³

Hence free coinage of silver at 16 to 1 would mean not bimetallism in fact, but silver monometallism. Being worth more as bullion, gold would not be used as money, but would be hoarded or exported in accordance with Gresham's Law. Further, debts contracted on a gold basis would be paid in silver money of greatly decreased purchasing power.

¹ "By the lowering of prices of agricultural produce since 1891, the debtor farmer found an ever-increasing difficulty in the payment of interest charges, and the foreclosure of city and farm mortgages throughout the West seemed evidence of general distress. Sober-minded representatives arraigned existing conditions: chains of slavery laid upon labor; privileged classes more strongly intrenched; silver stricken down as a co-laborer with gold." — Dewey, D. R., *Financial History of the United States*, p. 460.

² It is now generally admitted that free coinage of silver by the United States alone would be undesirable and impracticable, inasmuch as the other great nations of the world are on a gold basis. Many writers have advocated international bimetallism — a plan to secure bimetallism by international agreement, the leading nations agreeing upon the free coinage of both metals at a fixed ratio, and both to be full legal tender. Several monetary conferences have been held by representatives of the principal countries, but nothing as yet has been accomplished in this direction. Political reasons will probably prevent the adoption of such a plan, at least for many years.

³ This was the ratio in 1896.

(3) The fall of prices is due not to scarcity of money material, but to improved methods of production. The increased production secures practically the same money return as before, through the sale of a larger number of commodities at a lower price; and hence debtors whose business is affected by improved methods of production are not unduly burdened. In any event, changes in the purchasing power of money are part of the risk incurred by persons who enter into long-time contracts, such changes benefiting creditors if prices fall, debtors if they rise.

Cause of
decline in
prices

(4) The production of gold is increasing rapidly, having nearly doubled from 1890 to 1897, and is entirely sufficient to meet the demands of the world's trade.¹

Increased
production
of gold

442. **Currency Act of 1900.** The elections of 1896 and 1900 resulted in the defeat of the party declaring in favor of the free coinage of silver at the ratio of 16 to 1, and the Currency Act of March 14, 1900, formally committed the United States to the policy of gold monometallism which had in fact prevailed since 1873. The important provisions of this act are: —

Chief pro-
visions

(1) The gold dollar is declared to be the standard unit of value, and all forms of money issued by the government are to be maintained on a parity with it.

(2) The treasury notes of 1890 are to be retired as rapidly as possible, being replaced by silver coins or silver certificates.

(3) Greenbacks when paid into the treasury are not to be reissued except for gold; and a special gold reserve of \$150,000,000 is to be maintained for their redemption. If necessary to maintain the gold reserve, short-time gold bonds bearing not over three per cent interest may be issued and sold to make up the deficiency in the reserve.

¹ In 1890, 5,749,306 ounces of gold were produced valued at \$118,848,700; in 1897, 11,420,068 ounces valued at \$236,073,700; in 1908, 21,378,481 ounces valued at \$441,932,200. — *Statistical Abstract*, 1909, p. 761.

(4) New regulations are introduced with reference to the various forms of paper money, such as that gold certificates shall not be issued in smaller amounts than twenty dollars each, while silver certificates are to be issued only in denominations of ten dollars or less.

443. Paper Currency. Paper currency is of two kinds, bank notes and government paper money. The discussion of bank currency involves a brief study of the institutions by which such currency has been issued — the two United States banks, the State banks, and the existing national banks. Government paper money will be discussed under two heads, treasury notes and legal-tender notes.

444. First United States Bank. Hamilton's financial measures included the organization of a bank modeled on the Bank of England, in which the federal government should be interested as a partner. The chief advantages claimed for such an institution were that it would afford a market for government bonds, and aid the Treasury by making loans; that it would afford a safe depository for government funds; and that its note issues would furnish the country with a uniform and stable paper currency. The bank project was vigorously opposed on constitutional as well as economic grounds by Jefferson, Madison, and Randolph, but the act granting the charter became law in 1791.¹

The bank was prosperous and successful, paying eight per cent dividends from the start; and the assistance which it rendered to the Treasury was fully as great as had been anticipated. However, when its charter expired in 1811, the bill for renewal was defeated in Congress by a close vote, the partisans of the State banks being aided in their opposition by those who believed a federal bank unconstitutional.

¹ The charter provided for a capital stock of ten millions, of which one fifth was to be subscribed by the government (the government subscription being loaned by the bank). Of the remainder of the capital, one fourth was to be payable in specie, and three fourths in government bonds bearing six per cent interest. The bank could issue notes to an amount which should not exceed the deposits by over ten millions, and these notes were receivable in payment of all debts due the United States.

445. **Second United States Bank.** The close of the War of 1812 found the currency in confusion. The State banks outside of Massachusetts had suspended specie payments, and had issued bank notes in excessive amounts. A second United States Bank was proposed as a means of supplying financial resources to an embarrassed Treasury, and restoring the national currency to a specie basis. Accordingly in 1816 Congress chartered a second United States Bank for a period of twenty years, following substantially the plan of the first bank.¹

Reason for
establish-
ment

The central bank was located at Philadelphia, and in time twenty-five branches were established. The affairs of the bank were grossly mismanaged during the first two years of its existence; and although sound business principles prevailed later, the success of the first United States Bank was only in part duplicated. The institution aroused the hostility of the State banks, and eventually incurred the enmity of President Jackson, whose famous war on the bank (1832-1836) prevented the renewal of its charter.

446. **Constitutionality of a Federal Bank.** The question of constitutionality was settled by the Supreme Court in the celebrated case of *McCulloch v. Maryland* (1819).² The Maryland branch of the bank refused to pay the tax upon its circulating notes imposed by the Maryland legislature, whereupon the State commenced suit against the cashier, McCulloch, to recover the amount of the tax. The opinion of the court, written by Chief-Justice Marshall, is one of the ablest and most celebrated expositions of the fundamental powers of the federal government. The two points decided in this case are:

McCulloch
v. Maryland

¹ The capital stock was to be \$35,000,000, of which government subscribed \$7,000,000. Of the remainder, \$7,000,000 was to be paid in specie, and \$21,000,000 subscribed in government stocks. The bank was authorized to issue convertible notes to the amount of its capital, these notes being accepted in payment of government dues. Government funds were to be deposited with the bank unless the Secretary of the Treasury should otherwise direct (in which case he was to lay before Congress the reasons for his action). In return for its privileges, the bank was to pay the government \$1,500,000 in three equal installments. Five of the directors were appointed by the government, and Congress was empowered to authorize an inspection of the bank's condition at any time.

² 4 Wheat. 316; Thayer's Cases, I, 271; II, 1340.

(1) Under the constitution, Congress has the power to charter a United States Bank, this being a necessary and proper instrument for carrying on the fiscal operations of government. (2) A State cannot tax such a bank or its branches, since the bank is an instrument employed by the federal government in the execution of its powers, and such an agency is exempt from State taxation.¹

Character-istics 447. **State Banks.** Much of the opposition to the first and second United States Banks came from the banks chartered by the various States. Three such institutions existed when the new government was established; in 1815 there were 208; and during the period from 1829–1837, the number increased from 329 to 788, while the volume of note issues and loans more than trebled. The character of the State banks varied greatly, depending upon the conditions imposed by the State granting the charter, and upon the surplus capital available in the particular community. Some were “mere batches of papermoney” without property or resources;² others, especially in New York and New England, were carefully regulated and prudently managed.

State bank notes The chief defects of the State banks were the excessive issues of notes, and the making of loans on inadequate security. Note issues were sometimes based upon the bank’s assets (which frequently amounted to nothing at all);³ or were protected by a general safety fund; or were based upon the faith and credit of the State granting the charter. The notes generally circulated at a discount ranging from ten to fifty per cent, and were of such uncertain value that this form of money became known as “wildcat currency.”⁴

¹ “If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the customs house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the people. They did not design to make their government dependent on the States.”—⁴ Wheaton, 316; Thayer’s Cases, II, 1344.

² In the case of many State banks, the nominal capital consisted largely of promissory notes, given by stockholders in payment of their shares. In 1814 the Pennsylvania legislature chartered forty-one banks with an aggregate capital of seventeen millions, only one fifth of which was required to be paid in; and fifteen of those chartered were insolvent within four years.

³ Upon the failure of the Farmers’ Exchange Bank of Gloucester in 1809, the outstanding notes of the bank amounted to \$580,000, the specie on hand to \$86.43.

⁴ In January, 1862, the outstanding notes of the State banks amounted to \$184,000,000, and this amount was expressed in about 7000 varieties of notes issued by 1496 different banks (not counting 5500 varieties of fraudulent notes).

In 1865, to strengthen the newly established national banking system, Congress laid a tax of ten per cent on the issue of notes by State banks, thereby taxing these notes out of existence. Many State banks still exist, performing the banking functions of deposit and discount; but they cannot afford to issue notes because of the federal tax.

448. The National Banks. During the Civil War, the imperious necessity of finding a market for United States bonds, together with the recognized evils of the State bank currency, led to the establishment of a system of national banks (February, 1863). In 1864 the law was largely recast, and (with later minor changes), the national banking system as it exists to-day was created.

Besides the usual banking functions of deposit and discount, national banks perform three important public functions: (1) that of affording a market for United States bonds, (2) providing a paper currency of uniform and stable value, and (3) serving as depositories for public money.

(1) Organizers of a national bank (not less than five in number) are required to invest at least one fourth of the capital of the bank in United States bonds, which are then deposited with the comptroller of the currency at Washington. The minimum capital depends upon the size of the city, and ranges from \$25,000 in places of less than 3000 inhabitants to \$200,000 in cities of over 50,000.¹

(2) The second public function of national banks is that of issuing notes. Every bank is entitled to receive from the comptroller national-bank notes equal in amount to the par value of the bonds deposited. By depositing additional bonds, banks may increase their note issues as business conditions require (not, however, in excess of their capital stock). The notes issued are not legal tender, but they circulate throughout the country at par because their ultimate redemption is guaranteed by the deposit of United States bonds.

¹ That the national banks furnished valuable aid during the Civil War in creating a market for United States bonds is shown by the fact that in 1866 there were 1644 banks, owning bonds to the amount of \$331,000,000, with a note circulation of \$280,000,000. On September 1, 1909, there were 6977 national banks whose bonds for circulation amounted to \$668,700,000 with a note circulation of \$658,000,000. — *Statistical Abstract*, 1909, p. 605.

(3) The third public function is that of serving as depositories for government funds. When government funds are thus deposited, the banks are required to furnish satisfactory security by the deposit of United States or other bonds with the Treasury Department.

Public depositories 449. The Independent Treasury System. During the existence of the first and second United States Banks, these institutions had served as public depositories; in the interval between the two banks (1811–1816), the government used the State banks as depositories, as it did in 1834 when the Secretary of the Treasury withdrew the government deposits from the United States Bank.

Early public depositories In 1840, it was proposed that the government should care for its funds through the establishment of an independent treasury. Accordingly, in that year an act was passed establishing the independent treasury system which has existed since that date (except for the period 1841–1845).¹ At the present time, the public funds not deposited with the national banks are kept in the treasury at Washington, and in nine sub-treasuries.²

The drawback of the independent treasury system is that it involves the withdrawal of large sums of money from circulation, thereby causing spasmodic fluctuations in prices and derangement of the money market. On the other hand, the advantages of exclusive government custody are: safety, complete control of funds, and the prevention of favoritism in the designation of public depositories.

Advantages and defects 450. Government Paper Money. Bank notes constitute one great class of paper currency; the other is government paper money. The first issue of this form of money under the constitution was during the War of 1812, when treasury notes to the amount of

Issues during War of 1812 ¹ The act of 1840 establishing the independent treasury system was repealed in 1841; but in 1846 the system was reestablished.

² Located at Baltimore, Boston, Chicago, Cincinnati, New Orleans, New York, Philadelphia, St. Louis, and San Francisco. Each sub-treasury is in charge of an assistant treasurer of the United States.

\$36,680,794 were issued (1812–1815).¹ These notes were not legal tender, but were receivable for taxes and public dues. The greater part was in denominations of not less than twenty dollars, bearing interest at five and two-thirds per cent. These notes remained at par in specie until the banks suspended specie payments (1814).

The panic of 1837 led to a second issue of treasury notes, the total issues from 1837 to 1843 amounting to \$47,002,900. A third issue of such notes occurred during the Mexican War (1846–1848). Later issues

During the Civil War, a large variety of interest-bearing notes was issued, including one and two-year notes, compound interest notes, and certificates of deposit, amounting in all to \$1,098,000,000. These issues, like the earlier ones, were not legal tender, and were really certificates of indebtedness issued to secure short-time voluntary loans. Short-time
loans of
Civil War

451. **Legal-Tender United States Notes.** On February 25, 1862, an act was passed authorizing the issue of a different sort of currency — namely, \$150,000,000 of legal-tender United States notes, in denominations of not less than five dollars. The notes authorized were to be a legal tender for all public and private debts, except duties on imports and interest on United States bonds and securities.² Inasmuch as the notes were not redeemable in specie, they virtually constituted a forced loan to the government. Shortly afterwards, a second act was passed (July 11, 1862), authorizing the issue of another \$150,000,000. By acts of January 17, 1863, and March 3, 1863, a third issue of \$150,000,000 was authorized. Thus the legal-tender acts authorized a total of \$450,000,000 in notes, of which amount \$431,000,000 was actually outstanding on June 30, 1864. Three issues
during Civil
War

¹ Precedent for this kind of money was established during the Revolution, when the Continental Congress authorized a total of forty issues of Continental Currency, amounting in all to \$241,552,780.

² Interest on securities was made payable in coin in order to sustain the government credit; and duties on imports were payable in coin in order that the government might have specie with which to pay the interest.

The issue of these non-interest-bearing legal-tender notes constitutes a landmark in our financial history, for it was the first attempt under the constitution to create fiat money — that is, paper currency not based upon coin or bullion, containing no promise to pay coin, and therefore not convertible. The opponents of the measure urged the unconstitutionality of such action, and the economic disasters which would surely follow. On the other hand, the issue of legal tenders was declared necessary and justifiable by reason of public exigency — the necessity of meeting immediate government obligations, and of providing money for the purchase of bonds.

**Controversy
over legal-
tender notes**

The greenbacks fluctuated greatly in value, falling to thirty-nine cents on the dollar in July, 1864. The chief results of the depreciation were the rise of prices of commodities, and the fluctuating premiums on gold. Prices more than doubled from 1860 to 1865, while money wages only increased about forty-three per cent. Hence the heavy burden of inflation rested upon the laborers of the country, since wages and salaries did not rise in proportion to prices.¹

**Deprecia-
tion**

After the war the volume of greenbacks was gradually decreased, but yielding to popular opposition, Congress in 1878 ordered that there should be no further contraction of the greenbacks, and that when paid into the treasury these notes should be reissued. Since this legislation has not been repealed, the amount of legal-tender notes then outstanding, \$346,681,016, is still current.

Contraction

452. **Resumption of Specie Payments.** Not until January 14, 1875, did Congress enact legislation looking toward a resumption of specie payments. On that date an act was passed, providing for resumption on January 1, 1879. The Secretary of the Treasury was authorized to use the surplus specie in the treasury for this purpose,

Resumption

¹ The increased cost of the war to the government owing to the issue of paper money has been estimated at from \$500,000,000 to \$600,000,000; but this amount is small in comparison with the burden placed upon the people by inflated prices.

and if necessary to obtain additional gold through the sale of bonds. On becoming Secretary of the Treasury in 1877, Sherman commenced the accumulation of a gold reserve; and on January 1, 1879, he had accumulated \$133,000,000 in coin (\$95,500,000 through the sale of bonds). Slowly but gradually the value of the greenbacks rose toward parity with gold; and on December 17, 1878, they were quoted at par.

453. Constitutionality of Legal-Tender Notes. Prior to the decision of the Supreme Court in the Legal-Tender Cases, most commentators upon the constitution agreed that under the terms of that instrument Congress had no power to make paper money a legal tender. It was urged that the clause which conferred upon Congress the power "to coin money, regulate the value thereof, and of foreign coin," contains an implication that nothing but that which is the subject of coinage, i. e., the precious metals, can ever be declared money by law. A further argument against this power was deduced from the action of the Constitutional Convention in striking out the clause granting Congress power "to emit bills on the credit of the United States."

**Argument
against con-
stitutionality**

The question of the constitutionality of the legal-tender acts was first passed upon by the Supreme Court in 1869 in the case of *Hepburn v. Griswold*.¹ The point raised in this case was whether the United States notes were a legal tender in payment of debts contracted before the passage of the legal-tender act. The court held that the law was unconstitutional so far as it applied to debts contracted before its passage, basing its decision on the ground that the legal-tender clause was not a necessary and appropriate means of exercising any of the legislative powers conferred by the constitution. The majority opinion was delivered by Chief-Justice Chase, who had been Secretary of the Treasury when the notes were issued. The court was divided, five of the eight judges believing the law to be unconstitutional so far as it affected prior debts.

**First de-
cision of Su-
preme Court**

Shortly after this decision, there was a change in the personnel of the court through the addition of two new members, owing to the resignation of one justice, and to the passing of a statute enlarging the court from eight to nine members. In 1871 the legal-tender acts were again brought before

**Second
decision**

¹ 8 Wall. 603; Thayer's Cases, II, 2222.

the court in the cases of *Knox v. Lee*, and *Parker v. Davis*.¹ Two questions were now presented: first, whether the legal-tender acts were constitutional when applied to contracts made before their passage; second, whether they were valid as to debts contracted since their enactment. By a divided bench (five to four), the law was declared constitutional as to either prior or subsequent debts, the decision in *Hepburn v. Griswold* being overruled. The court based its decision upon the necessity for the government to employ the means essential to self-preservation, and declared the legal-tender feature of the notes to be a necessary and appropriate means for carrying into effect the great powers of borrowing money, raising armies, and levying war.

The right of Congress to issue legal-tender notes in time of war was now settled; but the act of 1878 had directed the reissue of such notes when returned to the treasury, thus raising the larger question of the right to issue these notes in time of peace. In the case of *Juilliard v. Greenman* ² (1884), the Supreme Court declared that Congress possessed this right as an incident to the borrowing power, and as a power generally appertaining to sovereign governments, and not prohibited by the constitution.

Third
decision

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), ch. xxvi.
 Blackmar, F. W., *Economics for High Schools* (1907), chs. xxviii-xxix.
 Bullock, C. J., *The Monetary History of the United States* (1900), pp. 79-121.
 Dewey, D. R., *Financial History of the United States* (1903).
 Dunbar, C. F., *Theory and History of Banking* (1893), ch. ix.
 Hart, A. B., *Actual Government* (1903), pp. 496-499.
 James, J. A., and Sanford, A. H., *Government in State and Nation* (1903), ch. xix.
 Jevons, W. Stanley, *Money and the Mechanism of Exchange*.
 McClain, E., *Constitutional Law in the United States* (1905), ch. xiii.
 Walker, F. A., *Money in its Relations to Trade and Industry* (1899).
 Watson, D. K., *History of American Coinage* (1899).
 White, H., *Money and Banking* (1896).

QUESTIONS AND EXERCISES

1. What were Hamilton's arguments in favor of the establishment of the first United States Bank?
2. Prepare a report on Jackson's war on the second United States Bank.
3. Weigh a five-dollar gold-piece on a druggist's scales; weigh five silver dollars. What is the ratio of these weights?

¹ 12 Wall. 457; Thayer's Cases, II, 2237. ² 110 U. S. 421; Thayer's Cases, II, 2255.

4. What is the market or bullion value of an ounce of gold? Of an ounce of silver? What is the market ratio between the two metals? How does this compare with the ratio found above?
5. What is the value of the silver in a silver dollar? What makes this coin worth one dollar in gold? What is the value of the gold in a five-dollar gold-piece?
6. How many grains of silver in a half-dollar? Do two silver half-dollars contain as much silver as one silver dollar? Why are they worth as much?
7. Examine the last Statistical Abstract, and prepare a table similar to that in Section 435, showing the amount of money in the United States.
8. From this table calculate the per capita circulation of money in the United States.
9. In what denominations are the different coins and paper money issued by the government?
10. Bring to class each of the various forms of currency for careful examination.
11. What proportion of the total value of money in the United States is in the treasury?
12. Explain how the Secretary of the Treasury may use his discretionary powers so as to influence the money market.
13. What percentage of our entire circulation is either gold or gold certificates?
14. How does the amount of gold in circulation compare with the amount of silver (or silver certificates)?
15. What relation exists between prices and the amount of money in circulation? How is the amount of currency increased as needed?
16. Where is gold produced in large quantities? Where are the largest silver-mines? What was the total production of each metal last year?
17. State Gresham's Law and describe its operation.
18. What sections of the country and what classes of the population have generally favored cheap money? Why is this?
19. Prepare a report upon the free-silver issue in the campaign of 1896.
20. Prepare a report upon the three issues of United States notes during the Civil War.
21. What is the essential difference between United States notes or "greenbacks," and other forms of paper money?
22. Explain the causes of the fluctuations in value of United States notes during the period 1862-1879.
23. What do you understand by the resumption of specie payments?
24. Prepare a brief report upon the Legal-Tender decisions.
25. May the United States make its notes legal tender to individuals but not to the government?
26. From your examination of a United States note, answer the following: (a) In what year did Congress authorize its issue? (b) Is it a legal tender? (c) Penalty for counterfeiting it? (d) What did the words "will pay the bearer five dollars" mean when the note was issued? (e) What do these words mean now?
27. Would it have been better if the framers of the constitution had inserted a prohibition of the issue of legal-tender paper money? What danger is there in permitting Congress to exercise this power?
28. May Congress give the national banks a monopoly of the banking business?
29. May a State government levy a tax upon a national bank, or its stock?

30. Name the national banks in your city. What is the capital of each? Why does the public ordinarily have entire confidence in their management?
31. Are national-bank notes legal tender? May Congress make national-bank notes legal tender?
32. Name several State banks in your city. What functions do these banks exercise? What function possessed by the national banks do they lack?
33. Prepare a report upon the State banks prior to the Civil War.
34. What forms of credit are largely employed as a substitute for money?
35. Prepare a report upon the disadvantages of our independent treasury system. (Kaye, P. L., *Readings*, pp. 464-482.)

CHAPTER XXXI

COMMERCIAL FUNCTIONS

454. **Commerce under the Confederation.** The constitution has been called “the child of pressing commercial necessity”; and unquestionably the demoralized condition of commerce under the Confederation was a potent factor in securing its adoption. Regulation
by the sev-
eral States

Under the Articles of Confederation, power to regulate commerce had been reserved to the several States; and accordingly each commonwealth imposed its own restrictions upon goods imported from other States or from foreign countries. Hence each commonwealth competed with all the others in foreign and interstate trade, and each sought by reduced duties or more favorable navigation laws to increase its trade at the expense of sister States.

455. **Commerce under the Constitution.** The constitution vests in Congress the power “to regulate commerce with foreign nations and among the several States, and with the Indian tribes.”¹ Under this provision, each State retains control of the commerce wholly within its boundaries; and only when commerce passes beyond State boundaries to another State or foreign country does it become subject to federal control.² Consti-
tutional
provisions

The term “commerce” as used in the constitution has been broadly construed by the Supreme Court. It includes traffic, or the purchase and sale of goods, and also navigation and intercourse whether by land or Definition
of commerce

¹ *Constitution*, Art. I, Sec. 8, Par. 3.

² The authority of Congress over foreign and interstate commerce is subject to two constitutional limitations: (1) no tax or duty may be levied on articles exported from any State; and (2) no preference may be given, by commercial or revenue regulations, to the ports of one State over those of another.

water, together with all the means or agencies by which such intercourse is carried on. Transportation of persons, as well as freight, is included within the term.¹ The control of foreign commerce by Congress has been exercised chiefly with reference to three subjects — navigation, the tariff, and immigration.

Federal control 456. **Navigation.** Congress regulates navigation between this country and foreign nations, and between the States of the Union. Even navigation upon a stream wholly within the boundaries of a single State is subject to federal regulation, provided the stream by uniting with other waters forms part of “a continued highway over which commerce is or may be carried on with other States or foreign countries.”²

Rules of navigation In this connection, Congress has established rules of navigation, including the law of the road at sea, and the marine system of lights and signals. Congress has also passed laws relating to the government of seamen on American ships; defining the liability of ship-owners; establishing port and quarantine regulations;³ requiring the employment of licensed pilots; providing for coast surveys, lighthouses, buoys, life-saving stations, and for the improvement of rivers and harbors.

Registry Especially important are the acts relating to the registry of ships. Vessels that are registered as American⁴ are entitled to the protection of this government in any part of the world, and have other important privileges. Only American vessels can engage in the coasting trade, a term which includes trade with our insular possessions. Tonnage duties (taxes upon the carrying capac-

¹ The power of Congress is not limited to the condition of commerce as it existed when the constitution was formed; but the grant is in terms broad enough to enable federal control to keep pace with the progress of the country. Hence, as new agencies of commerce have been created, such as railroads, pipe-lines, telegraph and telephone systems, the federal authority has expanded to include them in its scope.

² The Daniell Hall, 10 Wall. 557, 563.

³ For example, certain ports are designated as ports of entry for the collection of customs; and at these ports all vessels are required to enter and clear.

⁴ Under the present laws no vessel may be so registered unless built in the United States and owned by its citizens.

ity of the ship estimated in tons) are levied upon both American and foreign vessels; but double duties are levied upon foreign vessels built in this country.

In spite of restrictions intended to encourage American shipping — some believe that partly owing to these restrictions — there has been a marked decline in the proportion of our foreign commerce carried in American vessels. At one time United States ships carried more than eight tenths of our foreign commerce; to-day they carry less than one tenth.

Decline in
American
shipping

As a remedy for this condition, a ship subsidy or bounty paid by government to American vessels has been strongly urged. Advocates of a subsidy point to the fact that the American flag has almost disappeared from the high seas, and claim that for economic and political reasons it is undesirable to have our commerce with other countries carried almost exclusively in foreign ships. They urge that subsidies are paid by many countries, and that they serve as a protective duty to both ship-building and ship-owning. Opponents of a subsidy reply that the decline in our shipping is due in part to unwise registration laws, but more largely to economic causes, especially the change from wooden to iron ships. They argue further that the carrying trade should be in the hands of the country which can carry most cheaply, and that it is improper to stimulate the business of ship-building and ship-owning by imposing a heavy burden upon other industries.

Ship
subsidies

457. River and Harbor Improvements. The improvement of waterways is one of the most important means of aiding navigation, and for this purpose the federal government spends annually many millions. Since 1822 about \$450,000,000 has been thus appropriated, the expenditures being authorized by “river and harbor” bills, usually passed biennially. The great defect of river and harbor legislation is that many unimportant improvements are undertaken in order to appease

Improve-
ment of
waterways

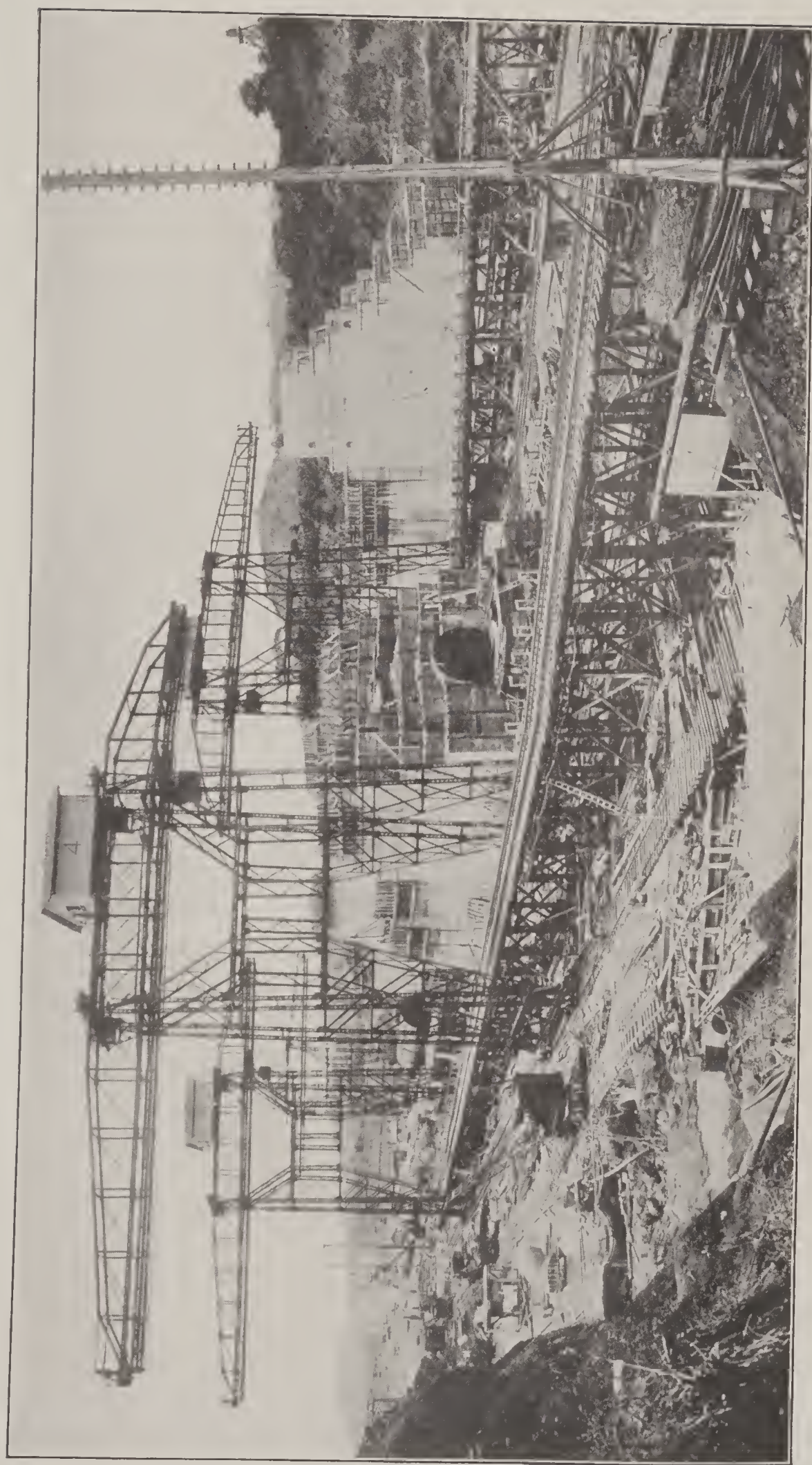
local interests and thus gain the necessary support of members — an evil so great that the river and harbor bill has been facetiously dubbed the “pork barrel.”

Extensive harbor improvements have been carried out, such as the construction of breakwaters and piers at Chicago, Cleveland, Buffalo, and Milwaukee; and vast sums are expended annually for the deepening of harbors, principally by dredging. Expensive works have been constructed on the Mississippi and Missouri rivers to secure deep water by confining the channel between walls, and a jetty system has been created at the mouth of the Mississippi and other Gulf ports. Levees or artificial dikes have also been constructed on a large scale, especially along the Mississippi.¹ All river and harbor improvements undertaken by the federal government are carried on under the direction of the Secretary of War, aided by engineers of the United States Army.

The Panama Canal at the southern extremity of North America is the greatest project yet undertaken by the United States for the promotion of commerce. The canal is to be about fifty miles in length, from deep water in the Caribbean Sea to deep water in the Pacific Ocean. It is estimated that this great work will require eight or ten years for its completion.

458. Tariff Duties. A system of tariff duties constitutes one of the principal means by which the United States, in common with many other countries, seeks to regulate commerce. Tariff duties include both import and export duties, but the latter are forbidden under our constitution, and are no longer levied by any important country. Import duties are sometimes levied solely to secure revenue for the government, in which case only commodities that do not compete with domestic products are taxed. This system of duties is called a revenue tariff,

¹ The federal government has spent \$130,000,000 on the Mississippi and its tributaries since the Civil War.



(By courtesy of the Isthmian Canal Commission)

PANAMA CANAL, PEDRO MIGUEL LOCK, LOOKING SOUTH, JUNE 30, 1910

THE PEDRO MIGUEL LOCK

The photograph shows the traveling cranes used in handling steel and other raw materials, and in mixing, transporting, and placing concrete; the storage trestles on which dump cars deliver sand and stone to the cranes; and portions of the concrete walls of the lock.

Each lock will be a chamber with walls and floor of concrete, and water-tight gates at each end. The side walls of the locks will be 45 to 50 feet wide at the surface of the floor; and 8 feet wide at the top. The middle wall will be 60 feet wide, and approximately 81 feet high. The chambers will be filled and emptied through lateral culverts in the floors, connecting with main culverts, 18 feet in diameter, in the walls, the water flowing in and out by gravity. The photograph shows the main culvert in the middle wall.

The lock gates will be steel structures 7 feet thick, 65 feet long, and from 47 to 82 feet high. They will weigh from 300 to 600 tons each. Intermediate gates will be used in the locks, in order to save water and time in locking small vessels through, the gates being so fixed as to divide the locks into chambers 600 and 400 feet long, respectively.

No vessel will be permitted to enter or pass through the locks under its own power. Electricity will be used to tow all vessels into and through the locks, and to operate all gates and valves, power being generated by water turbines from the head created by Gatun Lake.

CANAL STATISTICS

Length from deep water to deep water	50½ miles
Length on land	40½ miles
Bottom width of Channel, maximum	1,000 feet
Bottom width of Channel, minimum, 9 miles, Culebra Cut	300 feet
Locks, in pairs	12
Three pairs in flight at Gatun, with a combined lift of 85 feet; one pair at Pedro Miguel, with a lift of 30½ feet, and two pairs at Miraflores, with a combined lift of 54½ feet at mean tide	
Locks, usable length	1,000 feet
Locks, usable width	110 feet
Gatun Lake, area	164 square miles
Gatun Lake, Channel depth	85 to 45 feet
Excavation, estimated total	174,666,594 cubic yards
Excavation, amount accomplished April 1, 1910	103,205,666 cubic yards
Excavation by the French	78,146,960 cubic yards
Excavation by French, useful to present Canal	29,908,000 cubic yards
Concrete, total estimated for Canal	5,000,000 cubic yards
Time of transit through completed Canal	10 to 12 hours
Time of passage through locks	3 hours
Relocated Panama Railroad, estimated cost	\$7,225,000
Relocated Panama Railroad, length	46.2 miles
Canal Zone area	about 448 square miles
Canal Zone area, owned by United States	about 322 square miles
Canal force, actually at work	about 39,000
Canal force, Americans	about 5,500
Cost of Canal, estimated total	\$375,000,000

Work begun by Americans, May 4, 1904
 Probable date of completion, January 1, 1915

and prevails in Great Britain, Holland, Belgium, and a few other countries.

More often import duties are levied so as to restrict foreign competition in the interest of home producers, being laid upon commodities which compete with domestic products. This system of duties is called **Protective tariffs** protective, and prevails in the United States and in many other countries. In the United States the tariff question has frequently been an issue in political campaigns, and has been widely discussed by writers upon economics.

459. Tariff History of the United States. Our tariff history may be divided into four periods: the first extending from 1789 to 1816; the second from 1816 to 1842; the third from 1842 to 1860; and the fourth from 1860 to the present time.

The first period (1789–1816) was one of revenue tariffs, which in some instances afforded incidental protection. The second period (1816–1842) is marked by the inauguration of the **Early tariffs** protective policy, and by bitter political controversy upon this question. By the tariff act of 1816 duties were placed upon iron and textile manufactures in order to protect the new industries which had sprung up during the War of 1812 against the competition of Great Britain's long established industries.

The development of these manufactures — chiefly in New England and Pennsylvania — gradually made this region the stronghold of the protective movement. The agricultural States of the West were won over to the policy of protection **Sectional differences** through the argument that the growth of manufacturing centers is essential to afford a stable market for the sale of agricultural products. The South, on the other hand, bitterly opposed protection, on the ground that the tariff increased the price of the manufactured articles for which its staple — cotton — was exchanged. Southern opposition to the protective principle was greatly increased by the so-called "Tariff of Abominations" (1828); and in South Carolina this opposition finally culminated in the famous Nullification Act of 1832. The following year a compromise tariff act was passed, providing for a biennial reduction in rates until in 1842 a level of twenty per cent should be reached.

The third period (1842–1860) is marked by the prevalence of low rates, especially under the Walker Act of 1846, and the tariff

of 1857, which reduced duties to a lower point than at any time since the inauguration of the protective policy in 1816.

The fourth period (1861–1910), is characterized by high protective tariffs, a policy inaugurated by the Morrill Act of 1861.

Civil War tariffs Throughout the Civil War, the imperative need for revenue, together with the desire to offset the heavy internal revenue taxes on manufactures, led to repeated tariff enactments, each increasing the rate of duties. After the war most of the internal revenue taxes were repealed, but the high protective duties remained, and became the permanent economic policy of the country.

In the campaign of 1888 the tariff was one of the principal issues. The success of the Republicans in the election led to the

McKinley tariff enactment of the McKinley Tariff Act of 1890, a measure which extended the protective principle still further, increasing rates to a point higher than the war tariffs. By one provision of this act, the President was empowered to impose duties upon certain commodities, such as sugar, molasses, tea, coffee, and hides, provided any country exporting these commodities placed discriminating duties upon products of the United States.¹

The victory of the Democratic party in the campaign of 1892 led to a partial reversal of the protective policy in the Wilson

Wilson tariff Tariff Act of 1894. The act as originally passed by the House made substantial reductions in the rates, and placed many raw materials on the free list. As amended by the Senate and finally accepted by both houses, rates were still reduced, but the measure on the whole was protective. The most important provisions of the act were those placing lumber and wool on the free list, imposing a duty of forty per cent on raw sugar, and providing for an income tax to offset the anticipated reduction in revenue.

This measure was replaced in 1897 by the strongly protective tariff known as the Dingley Act, enacted by a Republican administration. The general purpose of the measure was to

Dingley tariff restore the rates of the McKinley Act of 1890, but in some cases even higher duties were imposed. The reciprocity provisions of the McKinley Act were revived in modified form.

In response to a widespread demand for a revision of duties, the

¹ Under the authority of this provision, the President concluded reciprocity treaties with a number of countries of Central and South America, also with Germany and France. These treaties came to an end after the passage of the Act of 1894.

Payne-Aldrich Tariff Act was enacted by a Republican Congress in 1909. This measure proved a disappointment to those who desired substantial reductions in tariff rates, since it continued the policy of high protective duties.

Payne-
Aldrich
tariff

460. Arguments for Free Trade or a Revenue Tariff. The term "free trade" as commonly used does not denote trade free from all restrictions, but rather trade which is not restricted by any duties except those essential for the purpose of revenue. In other words "free trade" is ordinarily used in the sense of "tariff for revenue," as distinguished from the system of protective duties.

Meaning of
free trade

The principal arguments urged by those who advocate free trade, or a revenue tariff, are as follows: —

(1) The arguments in favor of division of labor as between individuals apply with equal force to a territorial division of labor. Just as individuals find advantage in following occupations for which they are especially adapted, so different countries, because of diversity in climate, soil, and natural resources, will profit by devoting their capital and labor to the industries for which nature has especially adapted them. Freedom of exchange facilitates this territorial division of labor by permitting each country to employ its labor and capital in the most productive manner; and the products obtained under these favorable conditions may then be freely exchanged for goods which can be more advantageously produced by other countries.

Territorial
division of
labor

(2) A protective system, on the contrary, diverts labor and capital from unprotected to protected industries. But the fact that the protected industry needs artificial encouragement proves that it is relatively less productive; hence, such a diversion of labor and capital means curtailed production and economic waste, since it compels the community to resort to more difficult and costly conditions of production.

Protection
stimulates
less
productive
industries

(3) Moreover, if the protective policy is consistently followed, tariff rates must be changed to conform to changing industrial conditions. Frequent revision of tariff schedules creates unstable conditions of trade and commerce, resulting in economic loss.

Protection
means
frequent
revision

(4) Protection is also attacked as having encouraged the formation of trusts by enabling large combinations of capital to secure a monopoly of the domestic market. World-wide competition, on the other hand, would make such monopolies difficult, if not impossible.

Protection
favors
trusts

(5) Freedom of trade between the various States of the Union is admitted by protectionists themselves to be an un-
Analogy mixed good, notwithstanding the States differ greatly
from inter- in soil, climate, and rates of wages; and the same argu-
state trade ment applies with equal force to foreign trade, which, it is claimed, does not differ in principle from domestic trade.

(6) Again, protection is criticised on fiscal grounds. Since
Fiscal income derived by the government bears no direct rela-
objections to tion to financial needs. A large surplus invites waste-
protection ful and extravagant public expenditures; but the pro-
 tective principle and the industrial danger from frequent changes
 in tariff schedules tend to prevent a reduction in duties, even
 when these are clearly excessive.

(7) Protection is condemned on political grounds, since its
Political tendency is to invite lobbying and corruption on the
objections part of those interested in the special advantages
 which it gives to certain favored industries.

461. Arguments for Protection. The chief arguments
 urged in behalf of protection are as follows: —

(1) Diversification of industry is essential to the highest de-
Diversifica- velopment of a country, and protective duties induce the estab-
tion of lishment of industries which otherwise would not be
industry undertaken because of the marked advantages possessed
 by foreign producers in long established industries.
 Under the shield of the protective duty the infant industry may
 be established, and the burden to the consumer caused by the
 duty is ultimately more than compensated by the permanent
 creation of a profitable industry. From this point of view, pro-
 tection is a temporary policy, necessary only until the new in-
 dustries are firmly established, after which they may be able to
 compete with foreign industries without the advantage afforded
 by the tariff.

(2) The “home market” argument was advanced by Henry
Home Clay in order to reconcile the agricultural class to the “American
market system,” as protection was then called. Clay urged that
 the prosperity of the farmer depends upon a regular
 and constant market for his agricultural produce, and
 that such a market can be best obtained by upbuilding manufac-
 turing centers within the country. Moreover, these home markets
 demand perishable goods as well as agricultural staples, and
 hence encourage the diversified farming which serves to preserve
 the fertility of the soil.

(3) The wages argument is to-day largely relied on by protectionists, who point to the fact that higher wages are paid in our protected industries than in similar unprotected industries in other countries. It is claimed that a withdrawal of protective duties would lower the rate of wages and the standard of living — in short, that it would pauperize the laborers in many industries. Wages
argument

(4) Political and military reasons make it desirable that a nation should be able to produce its necessities of life, as well as its own military armaments. Hence for the sake of industrial self-sufficiency it may be advisable for a country to employ a part of its labor and capital even in the relatively less productive industries whose existence is only made possible by protection. Political
and military
advantages

(5) Some protectionists, especially the German economists, urge the importance of protection as a means of promoting a strong national feeling. Free trade, it is claimed, is cosmopolitan in its tendencies, whereas protection promotes a sense of national unity. National
spirit

462. Immigration. As part of its commercial power, Congress may regulate immigration or the coming of foreigners to this country for the purpose of residence. Until 1882 immigration to the United States was free from any restriction by federal law.¹ In 1882 Congress passed acts designed to exclude the pauper, criminal, and insane classes of aliens, as well as Chinese laborers; and a few years later (1885), the Alien Contract Labor Law was passed.

Under these and later acts, the classes of aliens debarred include idiots, insane persons, paupers or persons likely to become public charges, epileptics and persons suffering from contagious disease, criminals, polygamists, anarchists, persons whose passage is paid by another (with certain exceptions), laborers under contract made previous to emigration to perform labor or service in the United States, and Chinese and Japanese laborers. Classes
excluded

Present restrictions on immigration are little more than sanitary measures designed to protect this country from the

¹ However, the Alien Act, in force from 1798 to 1801, authorized the President to expel from the United States any foreigners deemed dangerous to the peace of the nation.

immigration of diseased or criminal classes. The prohibition of Chinese, Japanese, and contract laborers is based upon social and economic considerations — to prevent the introduction of a dangerously low standard of living; and — in case of the Chinese and Japanese — of a people incapable of assimilation.

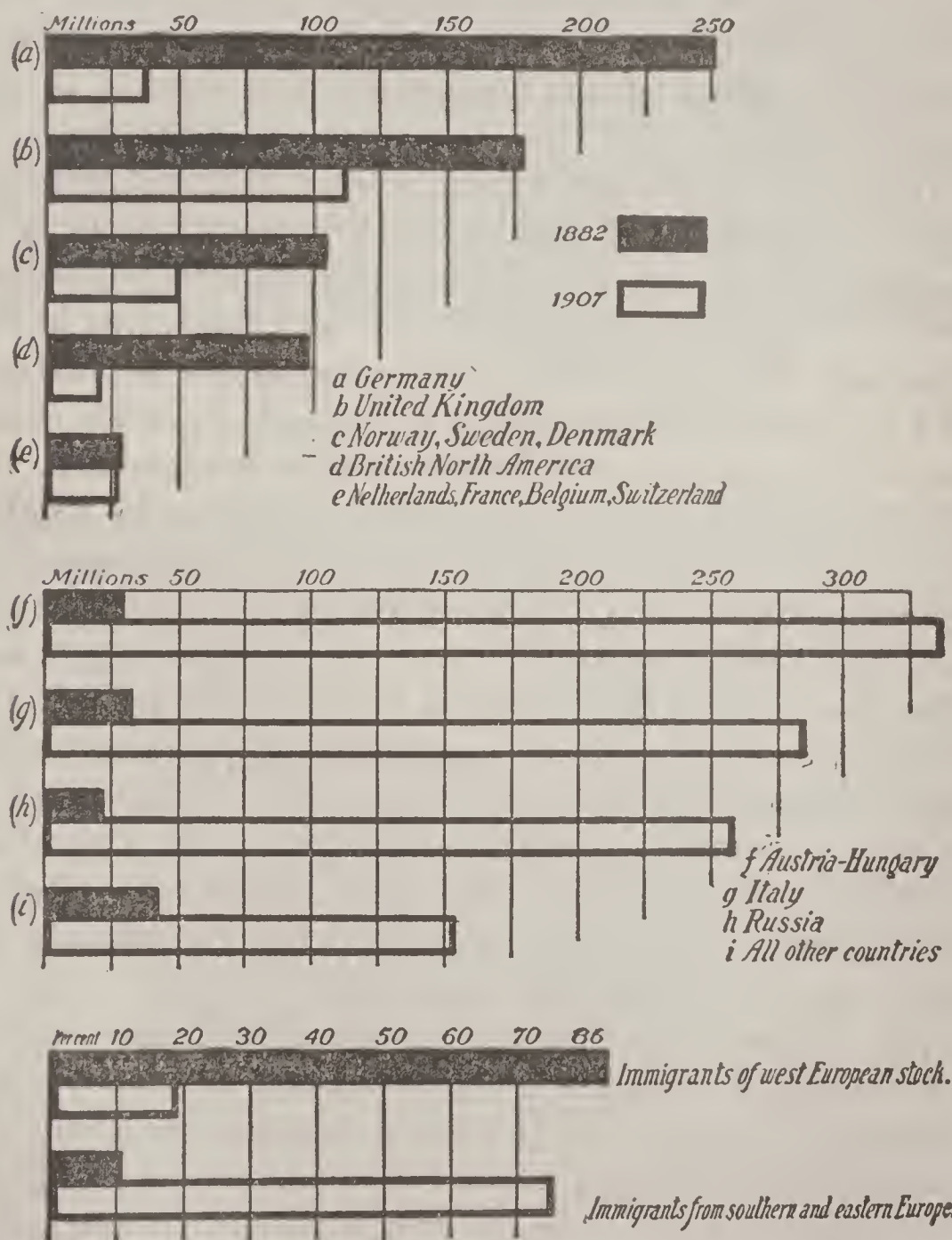
Immigrants not qualified to enter are returned at the expense of the steamship company bringing them, this liability continuing for a period of one year after landing. Only about one per cent of the immigrants who reach this country are excluded. The administration of immigration laws is entrusted to the commissioner-general of immigration of the Department of Commerce and Labor. Inspection by United States officials is provided for both at the point of departure and at the port of entry in this country.

463. General Characteristics of Immigration. Certain general characteristics of our immigration are so important as to deserve particular notice. Foremost among these is the great increase in the number of immigrants. Except during two decades, immigration has steadily increased since 1820, until the number of annual arrivals now approximates one million.

Even more important than this great increase in numbers is the marked change in the character of immigration. Formerly the great majority of immigrants came from countries allied to us in race or language — from Great Britain, Germany, and the Scandinavian countries; while a very small proportion came from the peoples of southern and eastern Europe allied to us by neither language nor race, and hence vastly more difficult of assimilation. Thus in the decades before 1880, about ninety per cent of our immigrants came from the United Kingdom, Germany, and the Scandinavian countries; and only about ten per cent from the countries of southern and eastern Europe, chiefly Italy, Russia, and Austria-Hungary. In

the years since 1880, the immigration from southern Europe has rapidly increased, while that from northern Europe has relatively declined. At the present time western Europe sends only about eighteen per cent of the total immigration, while southern and eastern Europe send nearly seventy-six per cent, most of which comes from Austria-Hungary, Italy, and Russia.

With this change in the sources of our immigration, the



SOURCES OF OUR IMMIGRATION FOR THE YEARS 1882 AND 1907

percentage of illiterate immigrants has greatly increased.

Increase in illiteracy Among Russian immigrants the percentage of illiteracy is 28.8 per cent, among the Polish 31.6 per cent, the southern Italian 54.5 per cent; while among German immigrants it is but 4 per cent, among the English 2 per cent, and among Scandinavian immigrants less than 1 per cent. The demand for the exclusion of illiterates led Congress in 1897 to pass a bill debarring aliens who could not read or write English or some other language, but the measure was vetoed by President Cleveland. Such a law would exclude nearly one third of the immigrants now coming to the United States.

One of the most serious dangers from immigration arises from the tendency of immigrants to concentrate in large cities. About 13.7 per cent of the total population of the United States is foreign-born; but in the principal cities (161 cities having over 25,000 population) 26.1 per cent of the population is foreign-born, while in the rest of the country only 9.4 per cent is foreign-born. In six of the principal cities of the United States, the number of foreign-born males of voting age is greater than the number of native-born. This concentration of immigrants has not only greatly increased the work of assimilation and education, but it has rendered vastly more difficult the many other problems which municipal governments must solve. Other important social effects of immigration relate to crime, pauperism, and insanity. Statistics show that of the criminal, pauper, and insane classes, the foreign-born furnish a much larger relative percentage than is the case with our native-born population.

464. **Control of Interstate Commerce.** As already pointed out, interstate as well as foreign commerce is subject to the control of Congress. By interstate commerce is meant the commerce which passes beyond the boundary of one State and enters another. Thus the term includes the transportation of goods, persons, or intelligence across State lines.



(By courtesy of the Commissioner of Immigration)

UNITED STATES IMMIGRANT STATION

Ellis Island, New York Harbor.



REGISTRY FLOOR, ELLIS ISLAND IMMIGRANT STATION

Showing the spaces in which the immigrants await examination before admission.



THE CUSTOM HOUSE AT NEW YORK CITY
One of the newest custom house buildings.



(Photograph by William L. Beecher)

THE CUSTOM HOUSE AT PHILADELPHIA
An example of the architecture of the older buildings of this sort.

While the power of Congress over interstate commerce is complete, it is not exclusive as in the case of foreign commerce. Interstate commerce may be affected by police regulations adopted by the States, such as quarantine and inspection laws, designed to prevent the introduction of persons or animals suffering from contagious or infectious disease. In order that State regulations affecting interstate commerce may be valid, two conditions are essential. First, the subject must be local in its nature, and one which can be best regulated by special provisions adapted to localities.¹ Second, State regulations even upon local subjects are invalid if the subject-matter has been covered by federal legislation — since in matters of interstate commerce, the police regulations of Congress are of paramount authority.

**Federal
control not
exclusive**

465. Instruments of Interstate Commerce. One of the most important means of promoting interstate commerce is the postal system, an exclusive monopoly of the federal government. The control of Congress over the postal service is based, not upon its power to regulate commerce, but upon its constitutional authority “to establish post offices and post roads.”² Whether Congress has constitutional authority to make a government monopoly of other means of transmitting intelligence, such as the telegraph and telephone systems, is an open question. Up to the present time these natural monopolies have been left in the hands of private companies, subject to congressional regulation of all interstate business transacted.

**Postal
system**

Money has been called the mechanism of exchange, and it is unquestionably one of the most important instruments of commerce. As we have seen, the federal government has entire control of the circulating medium, including the right to coin money, to establish a standard of value, and to declare what money shall be legal tender.

Currency

Furthermore, the power of Congress to provide a currency and to borrow money has been held to warrant the establishment of our system of national banks.

**National
banks**

¹ If the subject is national in its character, requiring or permitting uniformity of regulation, such as transportation between the States, the power of Congress is exclusive; and the absence of congressional legislation is equivalent to the declaration that commerce in the matter shall be free. — *Bowman v. Chicago and Northwestern Ry. Co.*, 125 U. S. 507; *Thayer's Cases*, II, 2080.

² *Constitution*, Art. I, Sec. 8, Par. 7.

The constitution vests in Congress power to fix the standard of weights and measures,¹ recognizing the importance to commerce of a uniform system. The adoption by all the States of the old English standards of weights and measures has partly obviated the need of congressional legislation. Up to the present time Congress has done little in the execution of this power, except to make permissive but not obligatory the use of the metric system.²

The power of Congress "to establish uniform rules on the subject of bankruptcies throughout the United States,"³ affects commerce to an important extent. The object of a bankruptcy law is to provide a judicial process whereby a person who cannot pay all his debts may divide his property proportionately among his creditors, and be discharged from further legal obligation.⁴

466. Railway Transportation. The period following the Civil War was marked by a rapid development of the railway industry. Many new lines were built, and an era of excessive competition followed, which proved injurious both to the roads and to the communities which they served. Between two points with a single line of railroad, rates were often exorbitant; whereas if competing lines connected two cities, the rates were sometimes below cost — the railways compensating themselves by heavy charges between points where there was no competition. Not only were there discriminations as between localities, but lower rates were often granted to favored shippers, thus making possible the creation of monopolies in certain industries. The railroads themselves endeavored to correct some of the evils resulting from excessive competition by forming combinations or "pools," — arrangements under which all freight between certain points was to be carried at a specific rate, and the proceeds pooled or divided among the competing lines in a certain fixed ratio.

As a result of these conditions, the shippers and the

¹ *Constitution.*, Art. I, Sec. 8, Par. 5.

² The metric system is in use throughout most of the western world except in the United States, and in Great Britain and her possessions.

³ *Constitution*, Art. I, Sec. 8, Par. 4.

⁴ See Section 516.

public generally demanded that the government take steps to regulate the railway traffic. Since the roads were ordinarily chartered by the States, relief was first sought from the State governments; and many commonwealths established railway commissions, some of which were authorized to fix maximum rates and to prevent pooling. State control proved ineffective because of its ^{State control} ~~ineffective~~ geographical limitations, since State regulations did not apply to the transportation which passed beyond State lines. By 1885, the railroads were deriving more than two thirds of their revenue from the interstate traffic which individual commonwealths were powerless to control, and widespread public sentiment demanded federal regulation of interstate transportation.

467. Interstate Commerce Act. Accordingly, in 1887, Congress passed the Interstate Commerce Act. As amended by subsequent legislation, its chief provisions are as follows: (1) Discriminating rates in favor of individuals or localities are prohibited, nor may railroads charge higher rates for a short haul than for a longer one over the same route, provided the short haul is included within the longer one. (2) Pooling or combination for the purpose of dividing traffic is declared illegal. (3) Publicity of railroad rates is made compulsory by providing that all rates must be published and can only be changed after due notice. (4) In order to carry out its provisions, the act creates an Interstate Commerce Commission of seven members, with power to require reports as to the operation of railroads, to hear complaints, summon witnesses, make investigations, and, under the Hepburn Act of 1906, to fix maximum rates. The commission may enjoin railroads from continuing actions which it deems illegal, and may establish maximum rates by which the roads are bound; but its decisions are not final, being subject to review by the courts.

The four great purposes of the act — to prevent discriminations, abolish pooling, secure reasonable rates, and

insure publicity in railroad affairs — have been achieved only in part. It has proved difficult to prevent secret rebates whereby certain shippers are favored; and it has been necessary from time to time to enlarge the commission's original powers which have proven too limited for the purposes the act was designed to secure. Pooling has been abolished, but the consolidation of numerous lines into a single system has made unnecessary the earlier forms of combination. In fact, the act has probably hastened the combination which it sought to prevent — a combination which economic laws made inevitable. In the matter of publicity, the results have been more successful, and the investigations of the commission have been of great value in throwing light upon the difficult problem of controlling railway transportation.

468. Anti-Trust Act of 1890. One of the most important regulations of interstate commerce is the federal anti-trust law of 1890. This act declares illegal every contract, combination in the form of trust or otherwise, or conspiracy in restraint of interstate or foreign trade. Persons guilty of violating the law are subject to punishment by fine or imprisonment or both, at the discretion of the circuit court. A supplementary act passed in 1903 gives the commissioner of corporations power to investigate the organization and management of any corporation in interstate trade (except those subject to the Interstate Commerce Commission); and the information obtained, or as much of it as the President directs, is to be made public.

In interpreting this act, the Supreme Court has held that its provisions do not apply to the manufacture within any State of goods to be shipped to another State or foreign country, since the process of manufacturing does not constitute commerce, but is a matter of internal police subject to State regulation only.¹ On the other hand, the consolidation of competing railway lines

**Results
of act**

**Provisions
of act**

**Interpreta-
tion by the
Supreme
Court**

¹ United States v. E. C. Knight Co., 156 U. S. 1; Thayer's Cases, II, 2165.

through the organization of a corporation to hold and control their stock so as to completely pool their interests is an arrangement in restraint of interstate trade, and an illegal attempt to form a monopoly.

GENERAL REFERENCES

- Andrews, J. D., *American Law* (1900), pp. 339-371.
 Beard, C. A., *American Government and Politics* (1910), ch. XIX.
 ——— *Readings in American Government and Politics* (1910), ch. XIX.
 Black, H. C., *Constitutional Law* (1897), pp. 186-207, 368-371.
 Blackmar, F. W., *Economics* (1907), ch. XXXI.
 Bryce, James, *The American Commonwealth* (1907), II, ch. CIII.
 Dewey, D. R., *National Problems* (1907), ch. XII.
 Goss, John D., *The History of Tariff Administration in the United States* (1897), Columbia Univ. Studies, I, no. 2.
 Hart, A. B., *Actual Government* (1903), ch. XXIV.
 Jenks, J. W., *The Trust Problem* (1901), ch. XI.
 Johnson, E. R., *Elements of Transportation* (1909), chs. XVI-XVIII, XXVII, XXXV, XXXIX.
 Latané, J. H., *America as a World Power* (1907), ch. XVII.
 McClain, E., *Constitutional Law* (1905), chs. XIV, XV, XVI.
 Pomeroy, J. N., *Constitutional Law of the United States* (1888), secs. 321-412.
 Reinsch, P. S., *Readings on the American Federal Government* (1909), ch. X.
 Smith, R. Mayo, *Emigration and Immigration* (1890).
 Story, J., *Commentaries on the Constitution* (5th ed., 1905), secs. 1056-1150.
 Taussig, F. W., *The Tariff History of the United States* (1905).
 Tucker, J. R., *Constitutional Law* (1899), II, pp. 519-563.
 Wright, Carroll D., *Outline of Practical Sociology* (1899), ch. VII, XXIV.

QUESTIONS AND EXERCISES

1. What was the amount of our foreign commerce last year? Did the exports exceed the imports?
2. From which five countries do we buy the most goods? Which five are our best customers?
3. Make a graphical comparison of our total foreign commerce with that of Great Britain, Germany, France, and Japan.
4. State the principal arguments for and against a ship subsidy.
5. Can Congress regulate navigation wholly within the boundary of a State?
6. Prepare a report upon the Panama Canal. Give an account of the acquisition of the canal zone and of the work accomplished; state how the canal will benefit commerce.
7. What amount did the federal government appropriate last year for river and harbor improvements? What part of this was for your State? Do inland cities receive any benefit from these improvements?
8. Prepare a report upon the Erie Canal, paying especial attention to its effects on our commerce.

9. Examine the map of the United States, and suggest canals which would aid commerce.
10. Name the great inland centers of commerce in the United States. Explain how the commerce and industry of each has been aided: (a) by canals; (b) by rivers; (c) by railroads.
11. Has the commerce of your city been aided by any of these means of transportation?
12. May Congress prohibit all exportation of goods from the United States?
13. What percentage of imports are admitted free? What are the principal articles on the free list? What articles furnish most of the tariff revenues? On what articles are the highest rates levied?
14. After the protected industry has become firmly established, is it wiser to increase or decrease the rate of duties? Do high protective duties encourage the formation of trusts?
15. Name the articles of commerce which can be readily produced in the United States. Those which cannot be easily produced here. Of the latter, which ones are on the free list?
16. Why do business men object to frequent changes in tariff rates?
17. What is the present attitude of each of the political parties with regard to the tariff?
18. Prepare a report upon the enactment, chief provisions, and political results of the Payne-Aldrich Tariff Act. (Kaye, P. L., *Readings*, pp. 441-448.)
19. What is meant by reciprocity treaties? What are the advantages of such treaties? What are subsidies? Bounties?
20. How many immigrants came to the United States last year? How many were excluded?
21. What per cent of immigrants came from western Europe? From southern and eastern Europe? What was the percentage of illiteracy among the different nationalities?
22. Give arguments for and against an educational test for immigrants, such as the ability to read and write their own language.
23. May Congress prohibit the immigration of persons of a particular nationality?
24. May a State prevent immigrants from landing at its seaports? May a State prohibit the immigration of foreign-born persons coming from other States?
25. May Congress regulate commerce carried on wholly within the boundaries of a State?
26. How does our federal system of government complicate the problem of railway control?
27. Prepare a report upon the federal control of interstate commerce. (Kaye, P. L., *Readings*, pp. 483-490; Reinsch, P. S., *Readings*, pp. 507-526.)
28. Name the present members of the Interstate Commerce Commission. What is their salary? Term?
29. Is there a railway commission in your State? How do its powers compare with those of the Interstate Commerce Commission?
30. Name five great railway systems engaged in interstate commerce. How are they controlled by the federal government?
31. May Congress prohibit the consolidation of steamship companies? Of railroads?
32. May Congress forbid the transportation across State lines of goods manufactured by child labor?

33. In what ways has the federal government aided the construction of railroads?
34. Name five great industrial corporations engaged in interstate commerce. Has the federal government any means of controlling them?
35. Prepare a report upon the Sherman Anti-Trust Act of 1890. (Kaye, P. L., *Readings*, pp. 490-492.)
36. Discuss the economic aspects of trusts, and the best methods of regulating them in the public interest. (Jenks, J. W., *The Trust Problem*; Kaye, P. L., *Readings*, pp. 492-497; Reinsch, P. S., *Readings*, pp. 485-507.)
37. Prepare a report upon the important measures passed by the 59th Congress affecting commerce. (Reinsch, P. S., *Readings*, pp. 473-485.)
38. Should Congress make the telegraph business a government monopoly?
39. May Congress provide for the granting of trade-marks?
40. What would be the advantages of the establishment by federal law of the metric system of weights and measures?

CHAPTER XXXII

INTERNATIONAL RELATIONS

469. International Law. International law is the body of rules concerning mutual rights and duties which civilized nations accept as binding in their dealings with one another. These rules are sometimes formally adopted in treaties or conventions, but more often are usages which by general acceptance have become obligations. For this reason international law is lacking in precision and certainty. It depends for its enforcement chiefly upon the spirit of justice and fair dealing among nations, and upon the fact that violation of its rules may lead to war. But in the United States, as in Great Britain, international law is considered a part of the law of the land, Congress being expressly empowered to define and punish offences against it.

Definition and enforcement such important subjects as emigration, naturalization, extradition, representation through diplomatic and consular agents, maritime jurisdiction, protection of citizens and aliens, treaties and conventions of all kinds, and arbitration. Within its scope are also included such questions as the rights and duties of neutrals in time of war, e. g., recognition of belligerent rights, rules governing blockades, sieges, privateering, maritime captures, mediation, and intervention.

470. Federal Control of International Affairs. Under our constitution, control of international affairs is vested exclusively in the federal government, the States being



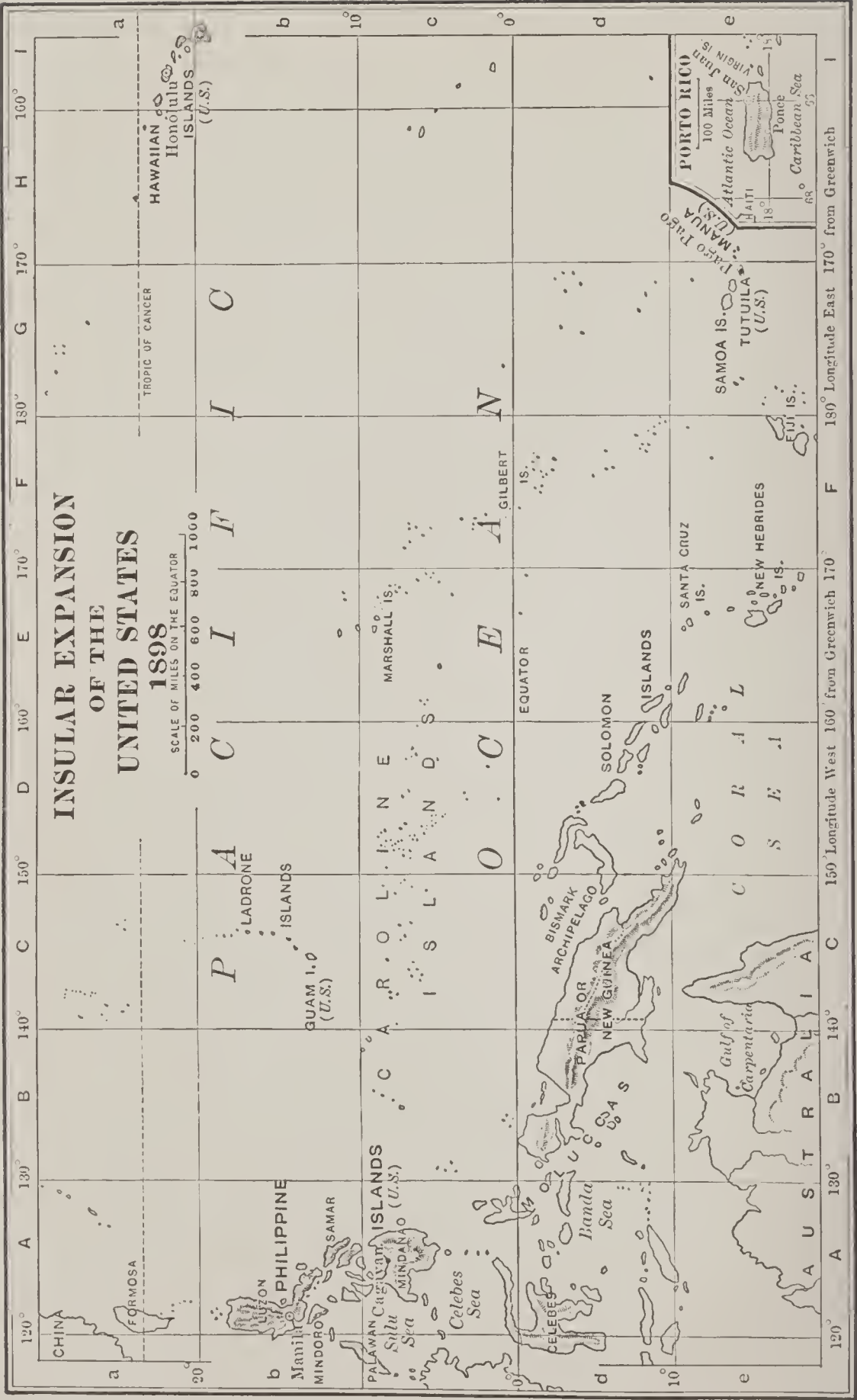
(By courtesy of the Review of Reviews Company)

THE GOVERNOR'S PALACE AT SAN JUAN, PORTO RICO



(By courtesy of the Review of Reviews Company)

INTERNATIONAL BUREAU OF THE AMERICAN REPUBLICS, AT
WASHINGTON, D. C.



expressly prohibited from participating in this function.¹ Thus the constitution gives the President and Senate sole power to make treaties; grants Congress authority to regulate commerce with foreign nations, to punish offenses against international law, to declare war, to raise and support armies, and maintain navies; and finally, it vests in the federal courts jurisdiction over all cases involving foreign affairs.

471. History of American Foreign Policy. Largely owing to the fortunate isolation of the United States from the field of European politics, foreign affairs have occupied a comparatively subordinate place throughout the greater part of our history; but on the several occasions when American diplomacy has been put to the test, signal successes have been won. The history of our foreign relations commences with the Revolutionary struggle, in which the important diplomatic results were the treaty of alliance² with France (1778), the commercial treaty with Holland whereby that country also recognized our independence, and finally the treaty of Paris which ended the war (1783). The treaty of peace with Great Britain may be considered one of the greatest triumphs of American diplomacy; for the American commissioners, boldly disregarding instructions from Congress to conclude no treaty without the concurrence of the French ministry, negotiated directly with the British government, and secured terms far more favorable to America than were desired by her French and Spanish allies.³

Revolution-
ary period

472. The Struggle for Neutral Rights. Throughout the years 1792–1815, Europe was in the throes of the Revolutionary and Napoleonic wars; and the constant aim of American foreign policy was to maintain an attitude of neutrality between the belligerent powers —

Conflicts
with France
and Great
Britain

¹ By express constitutional provision, no State may enter into any treaty, alliance or confederation; grant letters of marque or reprisal; or, without the consent of Congress, levy any import, export, or tonnage duties; keep troops or ships of war in time of peace; enter into any agreement or compact with another State or foreign power; or engage in war unless actually invaded or in imminent danger.

² Our first and only treaty of alliance greatly aided in the ultimate triumph of the Revolutionary cause; but its spirit was violated in the peace negotiations with England (1783), and during the administrations of Washington and the first Adams, it nearly involved us in war with Great Britain. Thus its "early abrogation or repudiation has made of it a red beacon of warning against similar conventions in the future." — Foster, J. W., *A Century of American Diplomacy*, 31.

³ France proposed to confine the new nation to the narrow strip of territory between the Atlantic Ocean and the Alleghanies, her policy favoring the possession by Spain of the Ohio and Mississippi valleys.

a position rendered difficult because of the aggressions of both Great Britain and France upon American commerce. The keynote of this policy was sounded by Washington in his neutrality proclamation (April, 1793), announcing the neutral attitude of the United States, and warning all American citizens to observe its obligations. But French depredations upon American commerce at length involved the United States in a quasi-war with that country (1798-1800); and intolerable British outrages, including the searching of American vessels and impressment of American seamen, at last precipitated the War of 1812. Although the Treaty of Ghent (1815) contained not a single provision concerning the issues which had occasioned the war, the United States had demonstrated that it would not suffer its rights as a neutral power to be violated with impunity; and since that struggle European nations have been slow to assume an aggressive policy toward this country.

473. Policy of Territorial Expansion. No results of American diplomacy during the first half of the nineteenth century were of greater importance than the several territorial acquisitions which more than doubled the national domain. **Important annexations** Louisiana and the Floridas were peacefully acquired by purchase; but the annexation of Texas resulted in the only unjustifiable war in our history, as a result of which Mexico was obliged to cede a vast domain to the United States. Eventual expansion on the southwest was inevitable; but the verdict of history is that the Mexican War was waged chiefly in order to acquire territory out of which slave States might be formed. Hence by strengthening the institution of slavery, this war indirectly promoted the Rebellion.¹

474. Foreign Affairs during the Civil War. During the Civil War, foreign relations were more critical than at any other period in our history. The chief aim of American diplomacy was to prevent foreign recognition of the Confederacy as an independent nation, and to ward off the constant menace of European intervention. Throughout the long struggle the governments of Great Britain and France were unfriendly to the cause of the Union; and especially in the dark days of 1862 there seemed imminent prospect of joint intervention by these two countries, or at least of their joint recognition of the Confederacy. The British government was indirectly given to understand that such recognition would result in a severance of diplomatic relations by the United States, and at length the crisis was passed in safety.

¹ *Personal Memoirs of General U. S. Grant*, pp. 53-56.

In the first year of the war, the capture of two Confederate commissioners on board the British mail steamer *Trent* en route for England seemed likely to result in a conflict with Great Britain; but the United States government, adhering consistently to its historic policy concerning the right of search, disavowed the act of Captain Wilkes, and restored the captured commissioners to the British authorities.

**The Trent
affair**

From the beginning of the war, the Confederacy made Great Britain a base of military operations against the Union, and their bold violation of British neutrality laws received little check from the British government, notwithstanding the earnest protest of the United States minister. Within a year after the construction of the *Alabama* (1862), this ship and other British-built Confederate cruisers had swept American commerce from the seas.

**Violations of
neutrality**

Not until several years after the war was redress secured, but finally, as the result of the Geneva Arbitration (1872), Great Britain paid the United States \$15,500,000 as damages for the depredations of these cruisers. The Geneva Arbitration not only settled the immediate question at issue between the two countries, but it helped to repair the breach of friendship resulting from Great Britain's attitude during the war. Not least among its results, this adjustment set the world an example of the value of arbitration as a substitute for war in the settlement of international disputes.

**Geneva
Arbitration**

475. The Monroe Doctrine. In his farewell address (September, 1796), Washington announced a maxim which has since become a fundamental principle of American foreign policy — that this country will refrain from intermeddling in the political affairs of Europe. President Monroe in his celebrated message to Congress of December 2, 1823, announced the second fundamental principle — that the United States will not tolerate intervention in American affairs on the part of European nations.

**Maxims of
Washington
and Monroe**

At the time when the Monroe Doctrine was formally announced, it seemed probable that the European powers united in the Holy Alliance¹ would endeavor to reëstablish the Spanish dominion over the South

**Monroe
Doctrine**

¹ The Holy Alliance formed in 1815 included the Emperors of Russia and Austria, and the

American countries which had practically achieved their independence. In his famous message President Monroe laid down two principles of the greatest importance: First, "that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers." Second, with regard to the Spanish-American states which had asserted and achieved their independence, that "we could not view any interposition, for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States."

In its essence the Monroe Doctrine is thus a declaration of home rule — America for the Americans. On numerous occasions in our history, its principles have been **Applications** invoked, notable instances being the protest of the United States against Spain's contemplated transfer of Cuba to either Great Britain or France (1825), during the insurrection in Yucatan (1848), on the occasion of the occupation of Mexico by French troops and the establishment of an empire supported by French bayonets (1862–1866),¹ at the time of De Lesseps' unsuccessful attempt to construct a Panama canal (1880), and finally in the interposition by President Cleveland during the controversy between Great Britain and Venezuela over the boundary of British Guiana.

A world power 476. **Present Position of the United States.** From a feeble third-rate power at the beginning of the nineteenth century, the United States has expanded its boundaries and developed its resources until to-day it

King of Prussia, France being soon afterwards admitted. The real object of the Alliance was to repress movements looking toward the establishment of constitutional government, and to support the despotic powers of the several sovereigns.

¹ During the Civil War the United States was not in a position to resist French aggressions in Mexico; but at its close an army under General Sheridan was sent to the Rio Grande frontier, and the French Emperor (Napoleon III) was given to understand that his troops must be withdrawn. Shortly after their withdrawal, Mexican troops overthrew the imperial government, reëstablished the republic, and executed Emperor Maximilian (1867).

is recognized as one of the foremost powers of the world. The annexation in 1898-1899 of Hawaii and the Philippines gave this country points of vantage in the struggle for supremacy in the Pacific; and the completion of the Panama Canal will greatly strengthen our position and prestige among the nations.

477. **Arbitration.** Disputes often arise between nations which cannot be settled through the ordinary diplomatic channels; and arbitration has been devised as A substitute for war a pacific means of adjusting such differences and of avoiding war, the ultimate and most terrible method of redress. Arbitration tribunals may be either temporary or permanent, and in either case are usually constituted by treaty between two or more countries, each agreeing to refer serious matters of dispute to arbitration, and to abide by the award. In modern times economic motives as well as humanitarian considerations have led to the employment of this method to an extent hitherto unknown; thus in the nineteenth century there were over one hundred and thirty important cases of arbitration. In both the number of arbitrations and the importance of the questions involved, the United States and Great Britain have led the world, the Geneva award of 1872 still forming a landmark in the history of arbitrations.

The year 1899 was marked by the establishment at The Hague of a permanent court of arbitration. This tribunal is composed of members chosen from a permanent The Hague Court list of arbitrators nominated by the nations concerned. The first resort to this tribunal was made by the United States and Mexico in 1902, and since that time The Hague Court has been the means of settling many international disputes.

478. **Foreign Intercourse.** Intercourse with foreign nations is carried on through two classes of agents Diplomatic and consular service belonging either to the diplomatic or the consular service. Broadly speaking, diplomatic agents

have charge of international affairs of a political nature, while consular agents are chiefly concerned with those of a business or commercial character.¹ The official head of both diplomatic and consular services is the President; but in matters of foreign affairs he ordinarily acts through the Secretary of State, who personally directs our foreign policy in accordance with the instructions and advice of his chief.

479. Diplomatic Representatives. The diplomatic representatives of the United States are of four grades or classes: ambassadors, envoys extraordinary and ministers plenipotentiary, ministers resident, and *chargés d'affaires*, or diplomatic subordinates temporarily in charge of the business of the legation. In all, the United States has diplomatic representatives in forty-two foreign countries. Representatives of highest rank, or ambassadors, are sent to ten countries; ² envoys extraordinary and ministers plenipotentiary represent the United States at thirty other countries; while in the remaining two, our representatives have the rank of ministers resident.

The President appoints diplomatic representatives (subject to confirmation by the Senate); and he may remove them at his discretion. The term of foreign representatives is not fixed by law, and many changes occur when a new President assumes office. No constitutional or statutory qualifications are prescribed for those who serve in this capacity; but appointees are generally men of considerable training in public service.

The salary of ambassadors is \$17,500; ministers plenipotentiary receive from \$10,000 to \$12,000; secretaries of legations from \$1200 to \$3000. These salaries are small in comparison with those paid by other countries for similar service; and the cost of heading a legation at the most important capitals is so great that only

¹ But the diplomacy of the present century is largely occupied with the extension of trade, so that the work of the diplomatic service, as well as that of the consular service, is intimately connected with the advancement of commercial and trade interests.

² Austria-Hungary, Brazil, France, Germany, Great Britain, Italy, Japan, Mexico, Russia, Turkey.

men of independent means can afford to accept the appointment.

The duties of our representatives in foreign countries are in general to safeguard and advance American interests in every possible way. They are to cultivate friendly relations with the power to which they are accredited; in case an American citizen is unlawfully treated, it is for them to seek redress; and not infrequently they are called upon to negotiate treaties under the personal direction of the Secretary of State.¹

Our representatives abroad are accredited to the rulers of the various powers, and foreign representatives in the United States to the President. A government may refuse to recognize in a diplomatic capacity any individual who for special reasons is offensive (*persona non grata*). In such case a new appointment must be made, or as a mark of displeasure the post may be left in charge of a subordinate.² So, too, any country may demand the recall of a minister who has made himself obnoxious to its government; or in exceptional cases, may summarily dismiss him.³

Diplomatic representatives enjoy important privileges and immunities, partly owing to the fact that they are the direct representatives of sovereign powers, partly because the important functions which they perform demand complete independence of action. The more important of these immunities are: (1) Exemption of the person of the minister from local jurisdiction, civil and criminal. In other words, he is not liable to arrest for any reason whatever, an exemption shared to a certain extent by his family and suite. (2) Inviolability of his residence, papers, and effects from any search or seizure.

¹ For the treaty-making power, see Section 379.

² In 1885, Italy and Austria successively declined to receive the minister appointed by President Cleveland.

³ The most famous instance in our history was the dismissal by President Washington of the French agent, Genet. A less noted case was the dismissal of the British minister to the United States on account of his indiscreet utterances concerning the presidential election of 1888.

(3) Exemption of his personal belongings from taxation.
 (4) Entire freedom of worship for himself and his suite.
 These privileges result from the principle known to law as ex-territoriality; that is to say, by a legal fiction, the minister is supposed to carry with him the jurisdiction of his home government over his person and residence, excluding to this extent the foreign jurisdiction.

480. Consular Officers and Agents. Consular officers, the second great class of foreign representatives, are charged with the special duty of advancing the commercial interests of the United States. The principal consular officers are consuls-general, consuls, and commercial agents.¹ Consuls-general are ordinarily sent to foreign capitals. Generally they have supervisory authority over the consuls in the country to which they are sent, and they often serve as consuls in the city where they reside. The salaries of consuls range from \$2000 to \$8000; those of consuls-general from \$3000 to \$12,000.

Consular officers, like diplomatic representatives, are appointed by the President subject to confirmation by the Senate.² Until recent years, any consular officer could be removed by the President at will, and appointments were generally given to those who had made themselves useful in political campaigns. This policy greatly impaired the efficiency of the service; and finally, by an act passed in 1906, the provisions of the Civil Service Act of 1883 were made applicable to the consular service. Appointments to the higher positions are now made by promotion from the lower grades, on the basis of ability and efficiency as shown in the service; and new appointments are made as a result of competitive examinations.

Although consuls are not entitled to the immunities of

¹ There are also vice-consuls-general, deputy consuls-general, vice-consuls, deputy consuls, consular agents, consular and office clerks, interpreters, and marshals of consular courts — in all over one thousand officials.

² Except commercial agents who are appointed by the President alone.

diplomatic representatives, most countries provide by treaty that they shall not be subject to arrest in civil cases, or to the seizure of their archives. Immunities

The duties of consuls pertain chiefly to commerce and trade; for example, they certify invoices of merchandise shipped to the United States; advise the home government of any infraction of treaty regulations; and report periodically upon economic conditions in the country where they reside, paying especial attention to possible expansion of United States commerce.¹ They also aid distressed American seamen who are ill or stranded in foreign ports; act as notaries for the authentication of various legal documents; certify to marriages, births, and deaths among Americans living within their respective consular districts; visé and in certain cases issue passports; aid in enforcing our immigration laws; and in general "stand as protectors and advisers of their countrymen in foreign lands." Duties

Consuls also perform certain judicial functions. They investigate and arbitrate differences between masters and crews which have occurred on American ships on the high seas; and in a number of countries, including Madagascar, China, Siam, and Turkey, our consuls have jurisdiction in both civil and criminal cases involving American citizens. Judicial powers

GENERAL REFERENCES

- Beard, C. A., *American Government and Politics* (1910), ch. xvi.
 ——— *Readings in American Government and Politics* (1910), ch. xvi.
 Baldwin, S. E., *Modern Political Institutions* (1898), chs. xii, xiii.
 Bryce, James, *The American Commonwealth* (1907), II, chs. xciv, cxii.
 Fairlie, John A., *The National Administration of the United States* (1905), pp. 81-91.
 Forman, S. E., *Advanced Civics* (1905), ch. xxxiv.
 Foster, J. W., *A Century of American Diplomacy* (1900).
 Hart, A. B., *Actual Government* (1903), ch. xxiii.
 ——— *National Ideals* (1907), ch. xvii.

¹ These reports are published monthly by the Department of Commerce and Labor in the series known as the Consular Reports.

Henderson, J. B., *American Diplomatic Questions* (1901).

Latané, J. H., *America as a World Power* (1900), ch. vi.

McClain, E., *Constitutional Law* (1905), ch. xxiii.

Pomeroy, J. N., *Constitutional Law* (1888), secs. 669-681.

Reinsch, P. S., *Readings on the American Federal Government* (1909), ch. xii.

QUESTIONS AND EXERCISES

1. Prepare a report upon the treaty of alliance with France (1778).
2. Discuss the Treaty of Paris (1783).
3. Discuss the origin, applications, and present status of the Monroe Doctrine. (Consult Foster, J. W., *A Century of American Diplomacy*.)
4. Prepare a report upon the diplomacy of the Civil War.
5. Discuss the French occupation of Mexico.
6. Give an account of the Alabama claims.
7. Report upon the rights and obligations of neutrals in time of war.
8. Has the Senate the right to be consulted before beginning treaty negotiations?
9. Give an account of the proposed arbitration treaty with Great Britain in 1897. Why was it rejected by the Senate?
10. May the House of Representatives refuse appropriations necessary to carry out a treaty?
11. May a treaty be superseded by a statute? A statute by a treaty?
12. May a State be compelled to observe the provisions of a federal treaty?
13. Give an account of the annexation of Hawaii.
14. Name several of our most important treaties, and state what questions were decided.
15. Name some of our greatest diplomatic successes.
16. Name several of the greatest ambassadors who have represented the United States abroad.
17. Name our present ambassadors to France, Germany, Great Britain, and Russia. Name the ambassador sent by each of these countries to Washington. Are there any foreign consuls in your city?
18. Describe fully the peace conference at The Hague. What influences are now at work for international peace? What are the chief obstacles in the way of the realization of this ideal?
19. Describe the efforts to improve our foreign service through the application of civil service rules. (Reinsch, P. S., *Readings*, pp. 651-675.)

CHAPTER XXXIII

TERRITORIAL FUNCTIONS

481. Territorial Power under the Constitution. For several years prior to the adoption of the constitution, the Confederation government had been in possession of a vast domain west of the Alleghanies to which the individual States had surrendered their claims.

Constitutional provisions

This condition naturally suggested the provisions of the federal constitution relating to territories and the admission of new States. Accordingly the constitution vests in Congress power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States"; and under certain limitations, to admit new States to the Union.¹

The constitution itself is silent in regard to the power to acquire new territory; but annexations have been made repeatedly throughout our history, until to-day this right is as firmly established as though expressly granted.

Right to acquire territory

482. Expansion of the National Area. Since the origin of the federal Union in 1789, the United States has expanded its boundaries, and its original area of 827,844 square miles has been increased to 3,743,344 square miles at the present time. The various annexations by which this enormous increase has been made are as follows:—

(1) In 1803 the vast territory known as Louisiana was purchased from France for \$15,000,000. This territory included all of the western Mississippi valley and the isle of Orleans, an imperial area of nearly a million square miles.

Louisiana Purchase

¹ Constitution, Art. IV, Sec. 3.

(2) The second annexation was that of Oregon, the territory west of the Rocky Mountains between parallels forty-two and forty-nine degrees north latitude. Title to this region was by discovery and exploration based partly upon the voyage of Captain Gray in 1792, but chiefly upon the overland expedition of Lewis and Clark in 1805. Our title to Oregon was for a time contested by Spain, Russia, and Great Britain; and the latter country did not relinquish its claim until 1846, when the treaty was signed establishing the present northwestern boundary between the United States and Canada.¹

Oregon

(3) In 1819 Florida was purchased from Spain for \$5,000,000, thereby giving the United States a natural boundary on the southeast.

Florida

(4) In 1845 the independent state of Texas was admitted to the Union by a joint resolution of Congress.

Texas

(5) In 1848, by the treaty which closed the Mexican War, the United States acquired the immense area south of Oregon and west of Texas, including California and what was then called New Mexico.²

First Mexican cession

(6) In 1853 the second Mexican annexation known as the Gadsden Purchase added a narrow strip in the southern part of Arizona, the consideration paid Mexico being \$10,000,000.

Gadsden Purchase

(7) In 1867 the vast territory of Alaska, comprising nearly 600,000 square miles, was purchased from Russia for \$7,200,000.

Alaska

(8) The Hawaiian Islands, over which a protectorship had virtually existed since 1851, were annexed by a joint resolution of Congress in 1898.

Hawaii

(9) By the treaty which closed the Spanish-American War (December, 1898), Spain ceded to this country Porto Rico, Guam, and the Philip-

Porto Rico, Guam, Philippines

¹ Hence 1846 is often given as the date of this annexation.

² On the map of the United States as it is to-day, this territory includes California, New Mexico, Arizona, Nevada, Utah, and portions of Colorado and Wyoming.

pine Islands, receiving as indemnity the sum of \$20,000,000.¹

(10) In addition to the foregoing important annexations, the United States has acquired title to a number of islands of minor importance, including a few guano islands off the coast of South America and in the Gulf of Mexico; also Midway, Baker, and Wake islands in the Pacific; and (in 1899) several of the Samoan islands, the most important of which is Tutuila. Samoan and minor islands

(11) For a consideration of \$10,000,000, the Republic of Panama in 1904 ceded to the United States perpetual control of a strip of land extending across the Isthmus of Panama, five miles in width on either side of the proposed canal route. Panama Canal Zone

483. **Early History of Northwest Territory.** The history of the territories belonging to the United States commences with the vast area north and west of the Ohio River, which in the latter part of the eighteenth century was vaguely described as the Northwest Territory.² By the Treaty of Paris (1783), Great Britain relinquished her title to this region; and the question of ownership was disputed by Virginia, New York, Massachusetts, and Connecticut, each of which laid claim to the territory either in whole or in part. Western land claims

These claims were viewed with alarm by such States as Maryland, Rhode Island, New Jersey, and Delaware, themselves so situated that they could not hope to expand in any direction. Maryland took the lead in suggesting that the western lands be formed into a public domain to be held by Congress for the common benefit of the States, and steadfastly refused to ratify the Articles of Confederation until assurance was given that this course would be adopted. Ultimately Connecticut, Establishment of the public domain

¹ Spain also relinquished her title to Cuba, which became an independent republic, although the United States has reserved the right of intervention in case of foreign aggression or serious domestic disorder.

² Out of this territory the States of Ohio, Indiana, Illinois, Michigan, and Wisconsin have been formed.

Virginia, and Massachusetts, following the example set by New York in 1780, ceded to the United States their claims to the region west of the Alleghany Mountains.¹

484. Early Territorial Legislation. By a resolution passed in 1780, the Continental Congress had promised that the
Territorial policy lands ceded by the claimant States should be “dis-
 posed of for the common benefit of the United States, and be settled and formed into distinct republican States which shall become members of the federal Union.” The two principles set forth in this resolution have ever since formed the basis of the territorial and public land policy of the United States.

A few years later Congress voted that a committee should
Ordinance of 1784 be appointed to draw up a plan for the government of its newly acquired domain in the west; and accordingly Jefferson as chairman reported the plan which with some changes was adopted as the “Ordinance of 1784.”

485. Ordinance of 1787. A second and more famous territorial act, known as the Ordinance of 1787, was adopted by Congress on July 13, of that year.² As an organic act this ordinance is only second in importance to the federal constitution itself, for it established firmly the principles which have since formed the basis of our territorial policy. This policy has had as its object, first, the establishment in the territories of that form of civil government which is best adapted to existing needs; and second, the preparation of the territories for their future position as States in the Union.

The ordinance provided for two stages of territorial government. A temporary government was to be first instituted, under which
Territorial government laws were to be made by the governor and three judges appointed by Congress. As soon as there were five thousand free male inhabitants of voting age in the territory, this temporary government was to be superseded by a

¹ Except the Connecticut Reserve, a strip of land along the southern shores of Lake Erie, reserved by Connecticut in aid of education.

² The Ordinance of 1787 was adopted by the Congress under the Articles of Confederation, and later reënacted with slight changes by the first Congress under the constitution.

more permanent government, representative in character. A legislature of two houses was then to be created, the upper house consisting of a council of five members appointed by Congress; ¹ while the lower branch was to be chosen for a term of two years by the voters of the territory. The legislature thus constituted had power to pass any law not repugnant to the principles of the ordinance, subject to the governor's right of absolute veto.

Representation in Congress was secured by means of a territorial delegate, chosen by the two houses of the legislature in joint assembly. This representative was to have a seat in Congress with the right to debate, but not to vote.

Representa-
tion in
Congress

In addition to the provisions regulating the framework of government, the ordinance contains six articles in the nature of a bill of rights, and these were declared to be an unalterable compact (save by mutual consent) between the United States and the people within the territory. Among these were provisions designed to guarantee to the citizens of the territory the rights of individual liberty, such as freedom of religious worship, the benefit of *habeas corpus*, trial by jury, and judicial process according to the common law; and also the right of proportionate representation in the legislature.

Individual
rights

The ordinance further provided that not more than five nor fewer than three States should be formed within the territory, and promised statehood whenever any district should have 60,000 free inhabitants, or at an earlier period if found consistent with the general interest. The constitution and government of the States thus formed were to be republican in character. The new commonwealths when admitted were to be "on an equal footing with the original States, in all respects whatever"; and were forever to remain a part of the United States.

Statehood

Perhaps the most important provision, because most far-reaching in its effect, was the prohibition of slavery throughout the territory. The anti-slavery clause was afterwards copied verbatim in the organic acts of the northern territories, and subsequently embodied in their State constitutions; and nearly eighty years later, with but slight alteration, it was adopted as the thirteenth amendment to the federal constitution.

Slavery

486. Later Territorial Legislation. Since the enactment of the Ordinance of 1787, Congress has passed many acts providing for territorial government,

Number of
territories

¹ These members were appointed for five years from a list of ten names submitted by the lower territorial house.

legislation made necessary by the additions to the national area. In all, twenty-nine organized territories have been created within the boundaries of the United States, while three territorial governments have been provided for the insular possessions.¹

Nearly all of these have passed through the two stages of territorial government provided for in the Ordinance of 1787. First a provisional government was established in which the people had practically no voice; and this was followed as soon as conditions permitted by the establishment of representative government.

487. Territories and Possessions on the American Continent. The territories now belonging to the United States may be divided into two groups: first, the continental territories; and second, the insular territories or dependencies.

Continental territories The continental territories include Alaska and the Panama Canal Zone, both in the first stage of territorial development. The District of Columbia has an unusual form of territorial government, specially devised for the seat of the national government.

488. The Government of Alaska. Although acquired in 1867, Alaska is still in the first stage of territorial development, having no legislative body. Its officers include a governor, surveyor-general, district attorney, and three judges, appointed by the President. Under the code of laws which Congress adopted for Alaska in 1900, communities having at least three hundred inhabitants may incorporate as towns, thereby receiving certain privileges of local self-government.

489. The Panama Canal Zone. The Panama Canal Zone, the latest territorial acquisition of the United States, is also under a provisional territorial government. The governing body of this district is the Isthmian

¹ The States which have never been territories of the United States include, besides the original thirteen, Maine, Vermont, Kentucky, West Virginia, Texas, and California.

Canal Commission of seven members, acting under the supervision of the War Department.

490. **Representative Territorial Government.** For many years prior to their admission to statehood, New Mexico and Arizona had representative territorial governments of the type which has been provided for most of our continental territories.¹ Under this form of government, executive power is vested in a governor appointed for four years by the President with the consent of the Senate. The powers of the territorial governor are quite similar to those of the governor of a State, but he is directly responsible to the President, to whom he reports annually on the condition of affairs in the territory. Other administrative officers are the secretary, treasurer, auditor, and superintendent of public instruction.

The territorial legislature consists of two houses, an upper house or council, and a house of representatives. Members of both branches are chosen for a term of two years by the qualified voters of the territory. The organization, procedure, and powers of the legislature are carefully regulated by federal statute, and are substantially the same as those of the legislatures of the several States. However, acts of the territorial legislature, besides being subject to the veto power of the governor, are liable to be annulled by Congress.

Judicial power is vested in a supreme and several district courts, the judges of which are appointed by the President.² The territorial legislature has power to establish such inferior courts as are found necessary.

Each territory sends to the House of Representatives a delegate, who has the salary and other privileges of a member, except the right to vote.

Thus the framework of government in the territories

¹ New Mexico was organized as a territory in 1850; Arizona in 1863.

² Territorial courts are not part of the federal judicial system, but are established by Congress under its power to govern territories; and hence the judges of such courts are subject to removal by the President at his discretion.

approximates closely to that which exists in the States, the essential distinction being the subordinate position which the territory occupies in relation to the Union.¹ National control is at all times paramount, and is exercised through acts of Congress modifying the status of the territory, or, in exceptional cases, directly annulling the acts of its legislature. Furthermore, federal administrative control is secured through the President's power to appoint and remove the principal territorial officers.

Comparison with State government **Creation**

491. The District of Columbia. Among the powers which the constitution confers upon Congress is the right "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States."² In 1790 the States of Maryland and Virginia ceded to the United States a district ten miles square lying upon the banks of the Potomac; but the part upon the south bank was retroceded to Virginia in 1846, reducing the district to its present area of about seventy square miles.

The government of the District differs radically from that which prevails in other territories, since the residents are completely disfranchised. They have no vote in the election of either local or national officials, nor are they represented in Congress by a delegate. Congress itself acts as the local legislature for the District, setting aside certain days each month for the consideration of its affairs.

Administrative powers are vested in a board of three commissioners appointed by the President with the consent of the Senate. One of the members is an experienced officer of the Engineer Corps of the army, detailed for an indefinite term; the other two are civilians, appointed for a term of three years. This board has large

Present government

Board of Commissioners

¹ The territories of course take no part in the election of a President.

² *Constitution*, Art. I, Sec. 8, Par. 17.

administrative powers, as well as the power of making local ordinances.

On the whole, this plan of government, non-representative as it is, has worked admirably. The affairs of the District have been managed efficiently, and Washington is conceded to be one of the best-governed cities in the world.¹

492. Other National Property. Congress has the exclusive right of legislation "over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."² Under this provision the federal government has acquired many sites for navy-yards, arsenals, military posts, lighthouses, post offices, customs houses, and other public buildings. Land to be used in this way is obtained by cession from the State legislature, and is thereafter exempt from State or local taxation.³

Under its constitutional power to regulate commerce with the Indian tribes, the federal government also exercises special jurisdiction over numerous reservations scattered throughout the West.⁴

493. Insular Territories or Dependencies. The insular dependencies of the United States include Hawaii, annexed in 1898; Porto Rico, the Philippines, and Guam, acquired in 1899 as a result of the war with Spain;⁵ a few islands of the Samoan group acquired by treaty in 1900; and three small Pacific islands — Wake, Midway,

¹ One half the expenses of the local government are paid out of the federal treasury, the other half being assessed upon the taxable property within the District.

² *Constitution*, Art. I, Sec. 8, Par. 17.

³ It is customary for the States to reserve the right to serve criminal and civil writs within the districts ceded, so that these may not serve as an asylum for fugitives from justice; and Congress by statute has provided that, even without such reservation, State processes may be served.

⁴ The most extensive Indian reservations are in Arizona, South Dakota, and Montana. Reservations have always been unpopular in the States where they exist, and the system is breaking down in favor of the plan of allotting lands to the Indians in individual ownership.

⁵ These islands were occupied by the United States forces in 1898; the treaty with Spain under which they were ceded was ratified April 11, 1899.

and Baker islands, claimed by right of discovery since 1898.

Of these dependencies, Hawaii, Porto Rico, and the Philippines possess representative territorial governments, but with a less degree of local independence than has been customary for our continental territories. Such minor dependencies as Guam and the Samoan islands are under the control of the naval officers in command of the naval stations; while Midway, Baker, and Wake islands require no government, being practically uninhabited.

**Insular
govern-
ments**

494. The Territory of Hawaii. Hawaii is governed under an act of Congress passed in 1900. This act extends to the territory the provisions of the federal constitution and laws not locally inapplicable, and confers citizenship in the United States upon citizens of Hawaii. The President appoints the governor; and this officer, with the advice and consent of the territorial senate, appoints for a four-year term the principal administrative officials.

Government

495. Government of Porto Rico. Porto Rico was governed by the War Department from its occupation by General Miles in 1898 until the establishment of a civil government by an act of Congress passed in 1900. This act is especially interesting, since it marks the first attempt of the United States to establish a system of government for a dependency which is practically in the position of a colony.

Executive power is vested in a governor and six administrative officers, namely, a secretary, attorney-general, treasurer, auditor, commissioner of the interior, and commissioner of education. These officers are appointed by the President for a term of four years.¹ Large powers of appointment and removal of subordinate officials are vested in the governor, and he possesses the customary veto upon acts of the legislature.

**Executive
officers**

The legislature consists of two houses. The upper branch or executive council is composed of the six heads of executive departments and five other persons, appointed by the President for a four-year term.² The executive council differs from all other American legislatures in the

**Executive
council**

¹ In 1904 a seventh administrative department was created, known as the office of Health, Charities, and Corrections.

² At least five of these eleven members must be native inhabitants of the island.

provision giving seats in this body to the heads of the six executive departments. This practice resembles in certain respects the English system of cabinet government, and is contrary to the American theory of separation of powers whereby the lawmaking department is distinct from, and independent of, the department charged with administration.¹

The popular branch of the legislature, known as the House of Delegates, is composed of members elected by the qualified voters for a term of two years.

House of
Delegates

The judicial system consists of a supreme court of five justices appointed for life by the President; seven district courts, each presided over by a judge appointed by the governor for a term of four years; and twenty-four municipal courts whose judges are elected by the voters for a term of two years.

Judicial
system

A complete system of local government has been established by the Porto Rican legislature for the municipalities, the voters electing the mayor and council.

Local gov-
ernment

Representation at Washington is secured through the election by the qualified voters of a commissioner, who is chosen for a term of two years.

Representa-
tion

496. Government of the Philippine Islands. The problem of establishing a suitable government for the Philippines has proven a difficult one, inasmuch as these islands are inhabited by races of almost every stage of development from savagery to civilization; and the task has been rendered still more difficult by the insurrection waged during the early years of the American occupation. The present government is in accordance with an organic act passed by Congress in 1902, and consists of a central government over the entire archipelago, with subordinate provincial and municipal governments.

Difficulty of
problem

Executive powers are vested in a commission of nine members including the governor. This commission is appointed by the President, subject to confirmation by the Senate.

Executive
officers

The legislature consists of two houses. The upper house consists of the Philippine commission; while the lower house or assembly consists of members elected for a term of two years by the qualified voters.

Legislature

Judicial power is vested in three classes of courts, a supreme

¹ Another distinctive feature of the council is that its sessions are not limited to the sixty days prescribed for the legislative session proper, but continue throughout the year, thus making it a sort of supervisory administrative body.

court whose justices are appointed by the President; a court of first instance (general jurisdiction) in each province; and justices' courts in the municipalities, the judges of the last two courts being appointed by the governor.

Local government varies according to the stage of civilization of the various provinces. Many of these have a governor, elected by the municipal councils of the province; and the governor with several appointive officials constitute a provincial board, which exercises administrative powers in the province.

In the municipalities there is a mayor and municipal council, the members of which are elected for a term of two years by the qualified voters. The city of Manila is governed under a special charter creating a plan of government modeled on that of the District of Columbia.

The Philippines are represented in the United States by two commissioners, chosen not by popular vote as in the other territories, but by the two houses of the legislature voting separately.

497. Relation of Territories to the Union. Congress has complete and exclusive legislative power over the territories, and may establish either provisional or representative government as appears best adapted to local needs. Even after representative institutions have been granted, Congress may annul the acts of the territorial legislature — a power exercised in 1887 when several acts of the Utah legislature favoring polygamy were declared void.

Only during the protracted controversy over slavery (1820–1860) was the power of Congress to legislate for the territories called in question. The territorial theory of the pro-slavery party was finally adopted by the Supreme Court of the United States; and the celebrated Dred Scott decision (1857) denied the power of Congress to prohibit slavery in the territories. The Civil War, together with the thirteenth amendment, rendered this decision nugatory, and the complete power of Congress to legislate for the territories is now conceded.

With the annexation of Porto Rico and the Philippines,

an important question arose as to whether by ratification of the treaty with Spain those islands became completely incorporated into the United States. If these possessions had become an integral part of the United States, then the provisions of the federal constitution would apply to them as well as to territory within the boundaries of the United States. Since the constitution prescribes that all duties and imposts shall be uniform throughout the United States,¹ the same tariff rates would prevail on goods entering Porto Rico and the Philippines as on those imported through the New York customs house. Moreover, no tariff whatever could be laid on goods imported from Porto Rico or the Philippines to the United States, or *vice versa*, since such a duty would be in effect a tax on exports, and so forbidden.²

Position of
dependen-
cies

But this theory as to the relation of the islands to the Union did not prevail. In the so-called Insular Cases, the Supreme Court distinguished between territory of the United States and territory belonging to the United States, holding that the provisions of the constitution do not necessarily embrace the latter unless so extended by act of Congress. To that body alone is entrusted the power to determine when territory is completely incorporated and hence subject to constitutional provisions. Meantime Congress may enact special tariff laws for such territory, differing from those for the United States in general; and hence the special tariff laws enacted for Porto Rico and the Philippines were declared valid.³

Supreme
Court
decision

498. Admission of New States. Territories are virtually inchoate or rudimentary States; and to prepare them for statehood as soon as their population and circumstances warrant has been the prime object of our

Conditions
of admission

¹ Constitution, Art. I, Sec. 8, Par. 1.

² Constitution, Art. I, Sec. 9, Par. 5.

³ By act of Congress, free trade now exists between the United States and Porto Rico, and goods imported from foreign countries into Porto Rico pay the same rates as those imported into the United States. In the case of the Philippines a special rate of duties is imposed upon goods imported into the Philippines from foreign countries, and upon importations into the United States from the Philippines, and *vice versa*.

territorial policy. Under the constitution, Congress is vested with power to admit new States into the Union; and it is for Congress to determine upon what conditions this action will be taken. Thus the new State may be required to accept certain boundaries, or to incorporate into its constitution certain fundamental provisions respecting religious freedom, and the like; and in all cases the government provided by its constitution must be republican in form.

A population at least equal to that of an average congressional district has usually been a prerequisite to admission, but the practice has not been uniform.

Population Nevada with a population of 20,000 was admitted in order to obtain the vote of that State for the thirteenth amendment. On the other hand, Utah with a considerable population was long denied statehood because of the institution of polygamy; and New Mexico and Arizona were refused admission for many years on the ground that their population, including many persons of Mexican blood, was not prepared for self-government.

Practically the only limitation upon the power of Congress in forming States is that the new commonwealth must not include territory lying within the boundaries of a State already admitted, without the consent of the legislature of the State concerned.

State not to be subdivided By express constitutional provision, territory cannot be taken from or added to any State without the consent of the States concerned, as well as of Congress.¹

In admitting new States to the Union, two different methods have been followed. Frequently Congress has passed an enabling act authorizing the people of the territory to frame a constitution and

Methods of admitting States

¹ The only case in our history of the subdivision of a State without its consent was that of West Virginia, which separated from the Old Dominion in 1861 in consequence of the ordinance of secession adopted by the State convention at Richmond. That part of the State west of the Alleghanies thereupon formed a separate government, and was admitted to the Union by Congress in 1862. Later Virginia acknowledged the validity of the creation of the new State.

apply for admission. In other cases, the citizens of the territory, acting on their own initiative, have called a convention and framed a constitution, which, after ratification by the voters, has been submitted to Congress for approval. Either of these methods of procedure is merely a preliminary step, the final decision as to admission resting entirely with Congress.

Although a new State can only be admitted upon such terms as Congress may prescribe, once in the Union it is on an equal footing with other States in all respects; and according to the weight of authority, may even amend its constitution regardless of conditions which have been imposed by Congress. Moreover, once in the Union a State cannot under any circumstances withdraw or secede, the Civil War having forever settled the principle that this is "an indestructible Union of indestructible States."

Immediately after the Civil War, the question arose as to the status of the eleven States which had passed ordinances of secession. Widely divergent views were held by President Johnson and Congress; but the congressional theory finally prevailed. This held that although the Southern States had never been out of the Union, their rebellion had forfeited their rights as States, and practically reduced them to the condition of conquered territory. Hence it was for Congress to determine how long this status should continue, as well as the conditions upon which the former States might be "reconstructed," and restored to their former privileges as commonwealths.

Position
after
admission

Secession
and recon-
struction

GENERAL REFERENCES

- Beard, C. A., *American Government and Politics* (1910), ch. XXI.
 ——— *Readings in American Government and Politics* (1910), ch. XXI.
 Black, H. C., *Constitutional Law* (1897), pp. 225-235.
 Bryce, James, *American Commonwealth* (1907), I, ch. XLVII.
 Callahan, J. M., *American Relations in the Pacific*, Johns Hopkins Univ. Studies, XIX, nos. 1-3 (1901).
 Carpenter, E. J., *The American Advance* (1903).
 Farrand, Max, *The Legislation of Congress for the Government of the Organized Territories* (1896).
 Hart, A. B., *Actual Government* (1903), chs. XVIII-XX.
 Hinsdale, B. A., *The Old Northwest* (1888), chs. X, XIV.
 McClain, E., *Constitutional Law* (1905), pp. 262-267.
 Morris, Chas., *Our Island Empire* (1899).
 Pomeroy, J. N., *Constitutional Law of the United States* (1888), secs. 483-499.
 Porter, J. A., *The City of Washington*, Johns Hopkins Univ. Studies, III, nos. 11-12.
 Reinsch, P. S., *Colonial Government* (1902), part VII.
 Rowe, L. S., *The United States and Porto Rico* (1904).
 Tucker, J. R., *Constitution of the United States* (1899), II, 602-616.
 Willoughby, W. F., *Territories and Dependencies of the United States* (1905).
 Woodburn, J. A., *The American Republic* (1908), ch. VIII.

QUESTIONS AND EXERCISES

1. Prepare a report upon the territorial growth of the United States.
2. On an outline map of the United States mark off with different colors the various territorial annexations.
3. Describe the territorial policy of the United States. Discuss some of the problems arising from the annexation of the Philippines.
4. Discuss the influence of the Ordinance of 1787; (a) upon local self-government; (b) upon slavery; (c) upon education.
5. Discuss the method of admitting a State into the Union.
6. Give an account of the Louisiana Purchase. What States were formed out of this territory?
7. What States, besides the original thirteen, have never been national territories?
8. Prepare a table giving the population and area of each of our territories and insular possessions.
9. Bound your State. Has it ever been part of, or has it ever included, another State?
10. How did your State receive its name? Its nickname?
11. When was your State admitted to the Union? Describe its territorial government prior to admission. How long was it an organized territory? Give a history of the steps by which admission was secured.
12. What restrictions has Congress imposed upon States as a condition to admission? Were any imposed upon your State? Are these conditions still binding?
13. Why was the capital of the United States placed under the exclusive control of Congress? Why was the present form of government estab-

lished for the District? What political rights are denied to residents of the District?

14. Describe the city of Washington — street plan, principal public buildings and places of interest, monuments, and surroundings.
15. Name any public buildings, forts, or reservations in your community which belong to the federal government.
16. Do the provisions of the constitution extend to the territories?
17. May Congress make a separate tariff for the Philippines? May Congress levy duties upon goods imported from Porto Rico or the Philippines to the United States? (Section 497.)
18. Are the people of conquered territories entitled to the privileges and immunities of the constitution?
19. What degree of local self-government has been granted to our insular possessions? Why are not the same political rights accorded to them as to continental territories?
20. Is there any likelihood that our insular possessions will ever be admitted as States?
21. Under the provisions of the constitution, could Texas be divided into four States? Could Indiana and Illinois be united into a single State?

CHAPTER XXXIV

MILITARY FUNCTIONS

Military powers of Congress 499. War Powers of the Federal Government. The constitution entrusts the war power to the federal government, the States being absolutely prohibited from keeping troops or ships of war in time of peace, or from engaging in war unless actually invaded or in imminent danger. The military powers vested in Congress by the constitution include the right (1) to declare war; (2) to grant letters of marque and reprisal; (3) to make rules concerning captures on land and water; (4) to raise and support armies; (5) to provide and maintain a navy; (6) to make rules for the government and regulation of the land and naval forces; and (7) to organize, arm, and discipline the militia.¹

President's military authority Important military powers are also entrusted to the President, since he is commander-in-chief of both army and navy, has power to call out the militia under certain conditions, and may make treaties with the advice and consent of the Senate.

500. American Wars. The important wars in which the United States has been engaged are as follows: (1) Revolutionary War, from April 19, 1775, to April 11, 1783; (2) War of 1812 with Great Britain, June 18, 1812, to February 17, 1815; (3) War with Mexico, April 24, 1846, to May 30, 1848; (4) the Civil War, April 12, 1861, to May 26, 1865; (5) War with Spain, April 21, 1898, to April 11, 1899.

The United States has also been involved in many minor wars. These include a protracted series of Indian conflicts;

¹ *Constitution*, Art. I, Sec. 8, Pars. 11-16.

the naval war with Tripoli from 1801 to 1805; a quasi-war with France from 1798 to 1800; and finally, the Philippine insurrection from 1899 to 1902.

501. The Declaration of War. A formal declaration of war is sometimes made at the outbreak of hostilities between two countries, this declaration serving as a public notice of the existence of war, and imposing upon other nations the obligations of neutrality.¹ The declaration is usually preceded by the dismissal of the respective ambassadors, thus severing diplomatic intercourse between the two countries. The right to declare war necessarily includes the power to wage war by every means known to any nation, subject only to the limitations prescribed by international law.

502. Letters of Marque and Reprisal. Letters of marque and reprisal are commissions authorizing "persons who are not in the regular service of the country to exercise the public power of warring upon and capturing vessels of the enemy upon the high seas."² In other words, such letters are commissions which license privateering. Most of the great powers except the United States have subscribed to the Declaration of Paris (1856), abolishing privateering as a means of waging war. Privateering was extensively used in the War of 1812 against Great Britain, but no privateers were licensed during the Spanish-American War.

503. Captures on Land and Water. The power to make rules concerning captures on land and water authorizes Congress to regulate the disposition of all property captured in time of war. Such captures may consist either of the persons or property of the enemy, or of neutral ships or goods taken while violating the rules of war; e.g., when neutral ships attempt to enter a port declared by one of the belligerents to be in a state of block-

¹ Declarations of war were made by Congress at the outbreak of the War of 1812 and the Spanish-American War; while in 1846 Congress passed an act declaring that "by the act of the Republic of Mexico a state of war exists between that government and the United States."

² Tucker, J. R., *The Constitution of the United States*, II, 578.

ade.¹ In the exercise of its authority concerning captures, Congress has enacted a complete code of prize regulations, and has established a system of prize courts. Congress may also enact temporary regulations for the government of territory of the enemy occupied by the forces of the United States, such territory being subject to final disposal through the treaty-making power vested in the President and Senate.

504. Power to raise and support Armies. The constitution vests in Congress power “to raise and support
Limitation upon power armies,” subject to the provision that “no appropriation of money to that use shall be for a longer term than two years.” This limitation was designed as a check upon possible abuse of power by the President as commander-in-chief. Since army appropriations must be made every two years, the military branch of the government is completely dependent upon the will of Congress.

The right to raise armies authorizes Congress to employ all means by which troops may be raised, even including
Extent of power a conscription or draft. “Supporting” armies and “maintaining” navies includes not only provision for food, clothing, transportation, equipment, and medical care of troops; but also authorizes the construction of forts, coast defenses, barracks, arsenals, depots, coaling and naval stations and yards. In fact, this clause empowers the federal government to employ all necessary and proper means which will further the country’s defense — it may manufacture arms and ammunition, build ships, educate officers in military and naval science, organize war and navy departments, provide for the payment of bounties and pensions, and perhaps may even construct railways as a means of facilitating the transportation of troops and *matériel* of war.

Throughout our history the standing army has been small except during actual war. Until 1898 the army on a

¹ During the Civil War, about fifteen hundred vessels were captured or destroyed while entering or leaving blockaded ports.

peace footing numbered less than 27,000 men; but in 1901, shortly after the war with Spain, the President was authorized to increase the army at his discretion to a maximum of 100,000 men. With the establishment of peace in the Philippines, this number has been materially reduced, and in 1909 the regular army numbered 4048 officers and 74,665 enlisted men.¹ This force consists of fifteen regiments of cavalry, thirty of infantry, six regiments of field artillery, a coast artillery corps, three battalions of engineers, the hospital corps, signal corps, and the staff departments.

In time of peace the army is recruited out of volunteers between the ages of eighteen and thirty-five who succeed in passing a rigid physical examination. The pay of private soldiers is small — from thirteen to sixteen dollars a month, besides barracks and food.

The stand-
ing army

Pay and
duties of
troops

The ordinary peace duty of the army is to garrison military posts and stations, protect government property, and serve as a reserve force in case of disturbances with which State authority cannot cope.

In time of war, troops may be raised in three ways. (1) By enrollment of volunteers, as in time of peace. (2) The President may call upon the States to furnish troops, under his power to call out the militia. (3) By conscription or draft, that is, the selection of men by lot for compulsory military service. The first two methods have been employed in nearly all of the important wars in which the United States has been engaged; drafting was resorted to only during the Civil War.²

Recruiting
in time of
war

505. Officers of the Army. The President is commander-in-chief of the army; and under him as acting head of the administration is the Secretary of War. The grades of officers are general and lieutenant-general (titles

Grades of
officers

¹ A small force in comparison with the standing armies of Europe. The United States is the only leading power except Great Britain which relies for defense on a purely volunteer army. On a peace footing the army of France numbers 529,000 men; that of Germany 617,000; of Russia 1,100,000; and of Great Britain 253,000.

² In New York City the draft occasioned the worst riot in our history.

given as honorary distinction in recognition of signal services); major-general, brigadier-general, colonel, lieutenant-colonel, major, captain, first and second lieutenant. The salaries of officers range from \$11,000 for lieutenant-general down to \$1700 for second lieutenant, with fixed increases after a certain length of service.

Officers are appointed by the President subject to confirmation by the Senate. Most of the higher officers are graduates of West Point; but in some cases they are appointed directly from civil life, and not infrequently men from the ranks are promoted to commands. Neither army nor naval officers may be removed in time of peace except by court-martial; but in time of war the President may remove summarily. Provision is made by law for the compulsory retirement of officers who have reached the age of sixty-four, and for their voluntary retirement after forty years of service. Retired officers receive for the remainder of their lives three fourths of the pay of their rank at retirement.

506. Education of Officers. The necessity of professional training for military officers was realized at an early date, and in 1802 Congress authorized the establishment at West Point, New York, of the Academy which has since become one of the famous military schools of the world.

Under the present plan, each Senator, each congressional district, and each territory is entitled to one cadet at West Point, appointed by the Secretary of War upon the nomination of the Senator or Representative concerned. In addition, forty cadets are appointed at large by the President, these appointments being commonly given to the sons of army or naval officers. Appointees must be between the ages of seventeen and twenty-two years, and must pass a thorough physical and mental examination, the latter including the common branches, also the subjects usually given in the first two years of the high-school course.

The course of instruction requires four years, and is chiefly mathematical and professional. Each cadet is paid by the government \$700 per year, a sum about sufficient for his support. Only one leave of absence is allowed during the four years, and this is granted at the end of the second year. Academic duties continue from September first to June first, the intervening months being spent in camp, where practical military training is given. Upon graduation cadets are commissioned as second lieutenants in the United States Army.

Besides the Academy at West Point, the United States maintains several institutions for more advanced military training. Among these are the War College at Washington, the General Service and Staff College at Fort Leavenworth, the Cavalry and Light Artillery School at Fort Riley, and the School of Submarine Defense at Fort Totten, New York. Valuable military training of an elementary character is given in numerous private military schools throughout the United States; also in many State universities and agricultural colleges, which receive grants of money from the federal government.

Other military schools

507. Militia. On account of the traditional distrust of a standing army, the United States has always relied largely for its defense upon the militia, or citizen soldiery. The unorganized militia includes all able-bodied men in the United States between the ages of eighteen and forty-five. Of this number only about 100,000 are included in the organized militia (commonly called the national guard). Hence only a small percentage of the entire militia has received any military training or discipline — a condition which has proven a serious drawback in all of our wars.

The constitution vests in Congress authority to provide for organizing, arming, and disciplining the men, but reserves to the States the right to appoint the officers, and to train the men according to the discipline prescribed by Congress (which is the same as for the regular army). The President may call out the militia under the conditions specified in the constitution, namely, to execute the laws of the Union, suppress insurrection, and repel invasions.¹ When thus called into the service of the United States these troops are subject to the President's authority as commander-in-chief; but they may not be kept in service for a period exceeding nine months in any year.

Control of militia

On three occasions — the Whiskey Rebellion (1794),

¹ *Constitution*, Art. I, Sec. 8, Par. 16. Whether circumstances exist which warrant calling forth the militia is for the exclusive determination of the President, and his decision may not be called in question by any court or other authority, either State or federal. — *Martin v. Mott*, 12 Wheaton, 19.

the War of 1812, and the Civil War, — the militia were called out by the President. In the Civil War President Lincoln issued three calls for the militia as such, to the aggregate number of 475,000 men.

Federal service 508. **The Navy.** Notwithstanding its splendid services in the War of 1812, and in the earlier struggle with the Barbary pirates (1801–1805), the American navy remained small and neglected throughout the greater part of our history. Finally in 1882 came a change in policy, and in the following year many new vessels of the most approved type were constructed. The wisdom of maintaining an adequate navy was proven in the war with Spain, when the new navy first demonstrated its efficiency as a fighting force. Since that war the programme of expansion has continued, until to-day the American navy ranks with the most powerful navies in the world, being about equal in strength to that of France or Germany, and only decisively surpassed by that of Great Britain.

History of navy In 1911, our navy had 27 battleships, 10 armored and 28 protected cruisers, 38 gunboats, 52 torpedo boats and destroyers, and 12 submarines, in addition to about 150 auxiliary vessels.¹ The ships of the navy are organized into fleets or squadrons, as the Atlantic and the Pacific fleet, each under the command of a rear-admiral. Unassigned vessels are sent abroad to protect American interests, and as a means of educating officers and men in new ideas and methods. The United States possesses eight navy-yards, together with a score of naval and coaling-stations.

Present strength and organization The official head of the navy is the President as commander-in-chief, next in authority being the Secretary of the Navy. The department organization includes eight bureaus for the management of the various branches of naval administration. Of these the most important is the Bureau of Navigation, which has charge of the personnel of the service and the direction of the fleet. Strategical and tactical matters are under the control of a General Board, corresponding to the General Staff of the Army.

¹ Under construction, or authorized: 6 battleships, 15 torpedo boat destroyers, 15 submarines, 1 gunboat, and 7 colliers.

The active list of the navy comprises 2368 commissioned and warrant officers, and about 44,500 enlisted men.¹ The grades of officers in the line of the navy are admiral, rear-admiral, commodore, captain, commander, lieutenant-commander, lieutenant, lieutenant (junior grade), and ensign. Salaries of officers range from \$14,850 for admiral down to \$1870 for ensigns, with increases proportionate to length of service. All officers of the navy are retired at sixty-two years, or after forty-five years of service, receiving for life three fourths of the pay of their rank at retirement.²

509. Education of Officers. The naval school corresponding to West Point is the United States Naval Academy at Annapolis, established in 1845. At present two midshipmen are allowed for each Senator, Representative, and delegate in Congress, and two for the District of Columbia.

Officers

United
States Naval
Academy

These are appointed by the Secretary of the Navy upon the nomination of the individual Senators, Representatives, or delegates. In addition, the President appoints one midshipman from Porto Rico, and five at large from the United States. Candidates for appointment must be between sixteen and twenty years of age, and must pass entrance examinations similar to those required at West Point.

The six-year course of instruction corresponds in many respects to that given in advanced technical schools. The last two years of the course are spent at sea, after which come the final examinations. There are annual practice cruises from June 1 to September 1. Midshipmen are paid \$600 annually from the date of admission, and upon graduation receive commissions as lieutenants of junior grade.

Advanced naval instruction is given in the Naval War College at Newport, Rhode Island, where officers are instructed in special branches, and plans prepared for naval operations. Other schools are the Naval Torpedo School at Goat Island, the several apprentice training schools for enlisted men, and the gunnery training schools for both officers and men.

Other naval
schools

510. Rules for the Government of Land and Naval Forces. The power "to make rules for the government

¹ An important auxiliary force is the United States Marine Corps with 267 officers and 9313 men. Naval reserves or militias exist in 19 States with a combined strength of about 6000.

² The pay of the men varies according to the classes into which they are divided — first class seamen receive \$26 per month, first class firemen \$38, and apprentice seamen \$16.

and regulation of the land and naval forces" is necessarily included in the power to declare war, and to raise and maintain armies and navies. At an early date, Congress adopted rules and articles for the government of the army and navy, thus establishing a code of military law for the government of land and naval forces. Petty offenses in both army and navy may be punished by the commanding officer; while more serious offenses are tried by court-martial.

511. Military Pensions. The pension system of the United States dates from the Revolutionary War, at which time the Continental Congress promised pensions for soldiers who should be disabled, and for the families of those who perished in the struggle. This promise was carried out in 1792 by the enactment of a general pension law; and since that time the United States has provided more generously for those who have fought for its flag than any other nation in the world. In addition to a disability pension, the soldiers of the Revolutionary War, of the War of 1812, and of the Mexican and Indian wars, were given grants of public lands amounting in effect to a service pension.

Down to the Civil War, expenditures for pensions did not exceed \$3,000,000 per year, and at the beginning of that struggle there were only 8636 pensioners on the rolls. Early in the Civil War, Congress pledged the public faith that those who were disabled in that terrible conflict, and also the families of those who were killed, should be provided for by the government. Accordingly, by the act of 1862, pensions were granted to disabled soldiers, and also to the widows of those who had fallen. Under this law, expenditures for pensions increased rapidly, but in no year before 1890 did the amount reach \$100,000,000. In that year an act was passed which greatly broadened the scope of the system by granting pensions to all persons who, having served in the Civil War, had become

for any reason unable to earn a livelihood. This act has very greatly increased pension expenditures, the annual amount of which has not been less than \$138,000,000 in any year since 1892. The last act for the benefit of Civil War veterans (passed in 1907) provides a service pension for all who served in the war, regardless of disability. At the present time there are over 900,000 pensioners on the rolls.¹

Since the establishment of the national government in 1789, the total cost to the United States for pensions is estimated by the Commissioner of Pensions at ^{Cost of} four billion dollars.² Over 90 per cent of this ^{system} enormous sum resulted from the Civil War, the total expenditure for Civil War pensions having now exceeded the original cost to the federal government of the war itself. At the present time the annual military expenditures of the federal government — including the cost of the army and navy and of pensions — comprise seventy-two per cent of the net ordinary expenses of government.³

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), secs. 304–307.
 Beard, C. A., *American Government and Politics* (1910), ch. xvii.
 ——— *Readings in American Government and Politics* (1910), ch. xvii.
 Black, H. C., *American Constitutional Law* (1897), pp. 220–224.
 Fairlie, J. A., *The National Administration of the United States* (1905), chs. ix, x.
 Forman, S. E., *Advanced Civics* (1905), ch. xxxiii.
 Glasson, W. H., *Military Pension Legislation in the United States* (1900), Columbia Univ. Studies, xii, no. 3.
 Harrison, B., *This Country of Ours* (1903), chs. xiii, xvi.
 Hart, A. B., *Actual Government* (1903), ch. xxv.
 McClain, E., *Constitutional Law in the United States* (1905), ch. xvii.
 Pomeroy, J. N., *Constitutional Law of the United States* (1888), secs. 441–482.
 Reinsch, P. S., *Readings on the American Federal Government* (1909), ch. xi.

¹ In addition to the pensions granted under general laws, many claims rejected by the Pension Bureau have been allowed by Congress in special acts. In all about 10,000 such acts have been passed since 1861, granting pensions to persons who could not bring the necessary proof before the Pension Bureau.

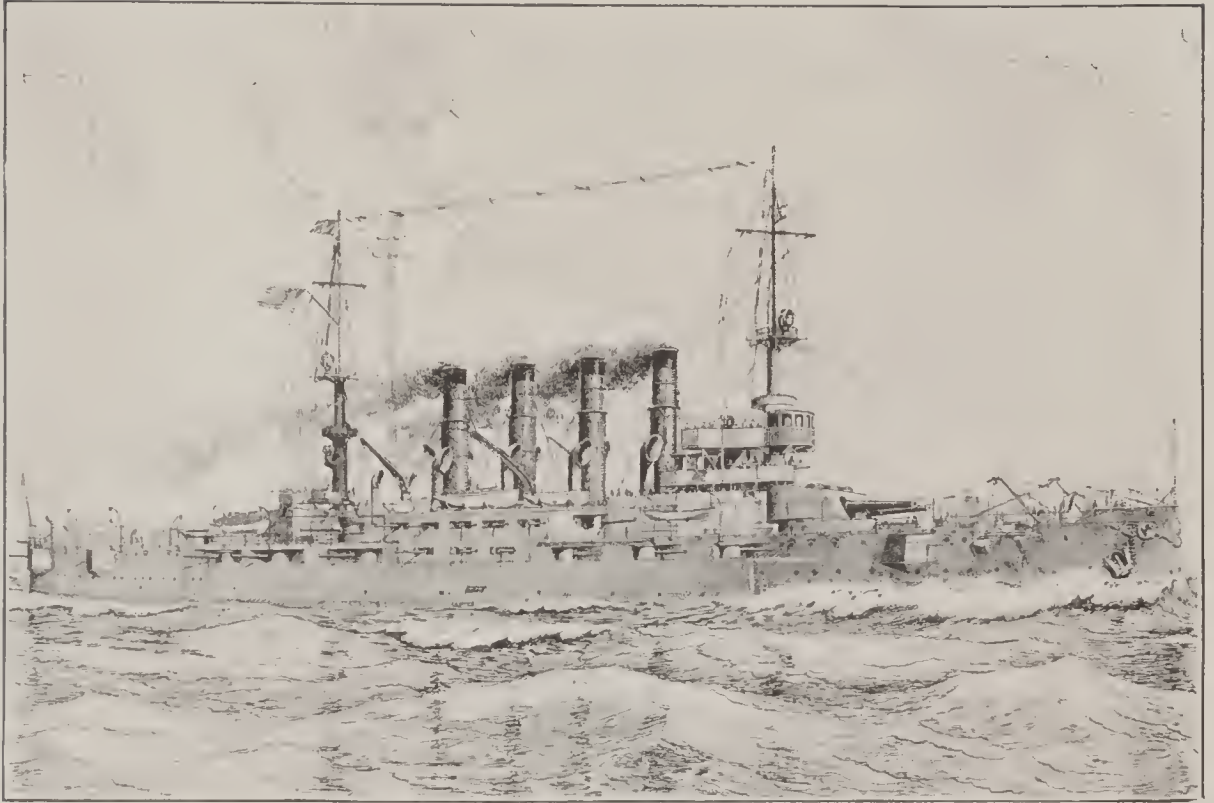
² See Section 396.

³ About 41 per cent of the federal expenditures are for the army, navy, and fortifications, and 31 per cent for pensions.

Tucker, John R., *The Constitution of the United States* (1899), pp. 576-597.
Upton, Emory, *The Military Policy of the United States* (1904).

QUESTIONS AND EXERCISES

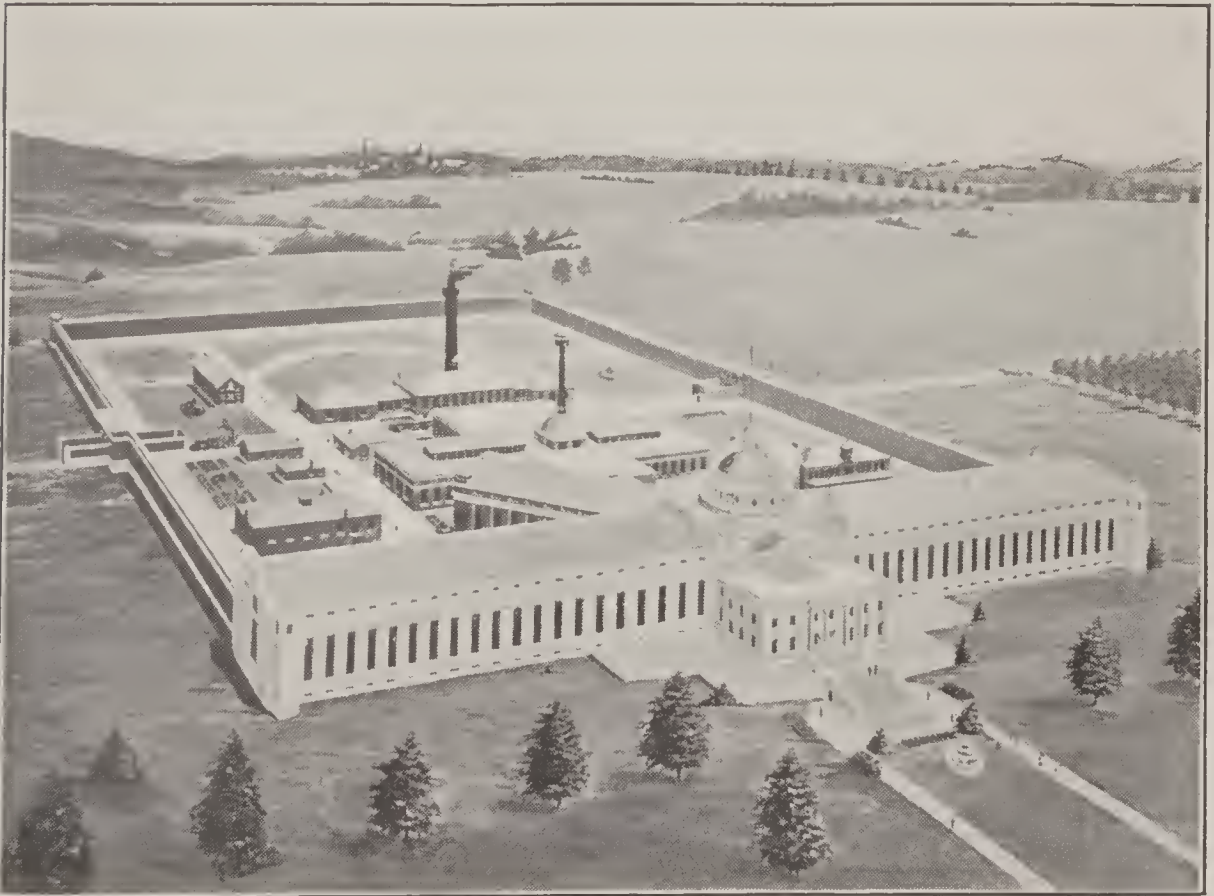
1. Name the causes, principal battles, and results of each of the five great wars which the United States has waged.
2. Name several restrictions imposed by international law upon methods of warfare.
3. What are the rights and duties of neutrals with regard to belligerent powers?
4. Prepare a report upon the President's military powers in time of war.
5. What is martial law? May a civilian be court-martialed?
6. May the property of individuals be confiscated as a war measure?
7. Have our recent territorial acquisitions involved any change in our historic military policy?
8. What is the present strength of our standing army? Into what departments is it organized? Who is the commanding general?
9. What was the amount of last year's appropriation for the army? For the navy? For coast defense? For pensions? Do you consider the total appropriation for military purposes excessive?
10. Assuming that preparation for war is a necessity, which should receive most attention, the army, navy, or coast defense?
11. Describe the principal defenses of the Pacific coast; of the Atlantic coast.
12. Give an account of the United States Military Academy; of the United States Naval Academy.
13. Give an account of the achievements of our navy in the Spanish-American War.
14. Compare our navy with that of Great Britain, Germany, France, and Japan.
15. Give an account of recent pension legislation.
16. Suggested readings upon the army and navy: Reinsch, P. S., *Readings*, pp. 610-650.



(By courtesy of the Navy Department)

THE ARMORED CRUISER "MONTANA"

Displacement, 14,500 tons; speed, 32 knots; cost, \$4,400,000. At the time of the war with Spain, our heaviest battleship displaced 11,346 tons. Battleships of the present day are of over 26,000 tons.



(By courtesy of R. W. McClaughry, Warden)

UNITED STATES PENITENTIARY, AT LEAVENWORTH, KANSAS

As it will appear when completed.

CHAPTER XXXV

MISCELLANEOUS POWERS

512. Control of Naturalization. Under the constitution, Congress has exclusive power to establish a uniform rule on the subject of naturalization; or in other words, to **Allens and** determine the conditions upon which aliens may **citizens** become citizens. An alien is a person who by reason of his foreign birth is not entitled to the privileges of American citizenship. Citizens are of two classes — native-born and naturalized. In general, all persons born within the United States, as well as the children born abroad of American parents, are native-born citizens. Naturalized citizens are aliens who have attained citizenship through the process of naturalization.

513. Process of Naturalization. The method of naturalization prescribed by Congress requires a minimum residence in this country of five years.¹ At least two years **Declaration** before his final admission, the alien must declare **of intention** on oath that it is his intention to become a citizen of the United States, and to renounce forever his allegiance to the foreign country of which he is a subject or citizen. This declaration is made before a circuit or district court of the United States, or before a court of record of the State in which the applicant resides.² The declaration of intention sets forth the applicant's name, age, occupation, personal description, place of birth, last foreign residence and allegiance, date of arrival in the United States, and present residence. The declaration is recorded and a certified

¹ This has been the required term since 1795 except during the years 1798–1802, when it was fourteen years.

² The State court must be one of common law jurisdiction, having a seal and a clerk.

copy furnished the applicant, who is then said to have taken out his first papers, or to have made his declaration.

Not less than two nor later than seven years from the declaration of intention, the applicant may present to the court a petition signed in his own writing and duly verified, requesting admission to full citizenship. This sets forth the fact that the petitioner has been a resident of the United States at least five years continuously, and of the State or district where the court is held at least one year; that he is not opposed to organized government, and is not a believer in polygamy; and that he absolutely and forever renounces all allegiance to the foreign country of which he has been a citizen. Finally, the applicant must declare on oath in open court that he will support the constitution of the United States. Two witnesses must testify to his term of residence; and if it appears to the satisfaction of the court that during that time he has conducted himself properly, he may be admitted to citizenship.¹ The naturalization of an alien includes his wife and minor children residing in this country.

514. Naturalization of Communities. When foreign territory is annexed to the United States, Congress may pass a general act conferring citizenship upon the inhabitants of such territory. This was done upon the annexation of Texas, New Mexico, and California, and shortly after the annexation of Hawaii.² The inhabitants of Porto Rico and the Philippines are entitled to the protection of the United States, but Congress has not yet conferred upon them the privilege of citizenship.

515. Effects of Naturalization. The result of naturalization is to confer practically all the privileges of native-born citizens, except that of eligibility to the Presidency or

¹ The privilege of naturalization is not accorded to aliens of all races, but is limited to "aliens being free white persons, and to aliens of African nativity and persons of African descent." The naturalization of Chinese is expressly prohibited by act of Congress; nor may citizenship be conferred upon aliens who cannot speak English.

² Another instance of collective naturalization was that which resulted from the adoption of the fourteenth amendment.

Vice-Presidency.¹ Naturalized citizens become citizens of the State or territory in which they reside, as well as of the United States. Naturalization does not of itself confer the right of suffrage, since the right to vote comes from the State, and the qualifications for suffrage are determined by State laws. But most States confer the right to vote upon all citizens of the United States who have resided within the commonwealth for one year; and eleven States even permit aliens to vote, provided they have declared their intention of becoming citizens.

Privileges of
citizenship

516. Power over Bankruptcy. A bankruptcy law is one which provides for the equitable division among his creditors of the property of an insolvent debtor, whereupon the latter is discharged from legal liability for the remainder of his debts. The object of a bankruptcy law is to afford relief to the debtor who is hopelessly insolvent, while also securing to each creditor payment of a proportionate share of his claim.

Bankruptcy
laws

The constitution vests in Congress power to establish uniform laws on the subject of bankruptcy throughout the United States. If Congress does not exercise this power, the States may pass laws dealing with the subject; but when Congress passes a national bankruptcy act, State bankruptcy laws are thereby suspended, the federal law operating throughout the entire Union.

Federal
and State
legislation

On four occasions in our history, Congress has exercised this power, but most of the federal bankruptcy laws have been of brief duration. Thus the bankruptcy act of 1800 was repealed in 1803; that of 1841 in 1843; that of 1867 in 1878; while the law passed in 1898 remains in force.

Federal
bankruptcy
laws

517. Proceedings in Bankruptcy. Under the present law, proceedings in bankruptcy may be instituted by the debtor or the creditor, the former being known as voluntary, the latter as involuntary bankruptcy. Any person

Voluntary
bankruptcy

¹ At least seven years of citizenship is required in order to be eligible to the House of Representatives, and nine years for the Senate.

who owes debts may become a voluntary bankrupt. In such case the debtor files a petition setting forth that he is unable to pay his debts, and that he is willing to surrender all his property for the benefit of his creditors.

Any person or corporation (except laborers, farmers, and national banks) owing debts to the amount of one thousand dollars may be adjudged an involuntary bankrupt upon committing certain acts of bankruptcy.¹

Original jurisdiction in bankruptcy cases is vested in the federal district courts, although the statute also provides for referees, who perform many judicial functions in bankruptcy proceedings. After the debtor is adjudged a bankrupt, a trustee is appointed who assumes control of his property and administers it for the benefit of creditors. After the claims of creditors have been established, the property is divided among them *pro rata* according to the amount of their claims. If the bankrupt's business conduct has been honest, he is then entitled to a legal discharge from his debts, although the moral obligation to pay them of course remains.

518. Power over Copyrights. In order to promote the progress of science and the useful arts, the constitution vests in Congress the power to enact copyright laws, whereby the works of authors may be protected. A copyright law is one which secures to an author the exclusive right to print, publish, and sell his writings, and generally the exclusive right to dramatize them. The present law grants a copyright for a term of twenty-eight years, and provides for a renewal by the author (or the widow, widower, or children of the author, or next of kin) for the further term of twenty-eight years.²

In order to secure copyright on a book or other work reproduced in copies for sale, the work must be published with the copyright notice;³ and promptly after publication, two copies of

¹ Acts of bankruptcy include: (1) conveying, concealing, or removing property with intent to hinder, delay, or defraud any creditor; (2) transferring property while involved in order to give one creditor a preference over another; (3) permitting while insolvent any creditor to obtain such preference through legal process; (4) making a general assignment for the benefit of creditors; (5) admitting in writing inability to pay existing debts and willingness to be adjudged a bankrupt on that ground.

² Copyright protection is granted to books and periodicals, maps, dramatic or musical compositions, photographs, works of art, or designs for works of art, sermons, and lectures.

³ The legal form is: "Copyright, 19—, by ———"

the best edition must be sent to the copyright office at Washington, together with an application for registration, accompanied by the fee of one dollar. In the case of books by American authors, an affidavit is required stating that the typesetting, printing, and binding of the book have been performed within the United States.

**Securing a
copyright**

Repeated attempts have been made to secure the enactment of an international copyright law, but as yet such efforts have proven unavailing. Many nations, including the United States, grant copyrights to citizens of foreign countries provided the foreign country grants reciprocal rights. The benefit of our copyright law to foreign authors is greatly restricted by the requirement that in order to secure protection, the book (if in the English language) must be printed in the United States.¹

**Interna-
tional
copyright**

519. Patents. Congress has authorized the granting of patents securing to inventors for a limited period the exclusive right to make, manufacture, and sell their inventions. Patents may be granted to any person who has invented or discovered any new or useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof; or any new or original design for an article or manufacture.² Patents are valid for a period of seventeen years.

**What may
be patented**

Patents are issued through the Patent Office, a bureau of the Department of the Interior since 1849. Applications must be made in writing to the commissioner of patents, the applicant being required to state under oath that he believes himself to be the original inventor of the article upon which he seeks a patent. The application must be accompanied by a written description of the invention, giving all the specifications in a full, clear, and concise manner. The description is generally accompanied by drawings, and if necessary the inventor may be required to furnish a model.³

Applications

¹ Books of foreign origin in a language other than English need not be manufactured in the United States in order to secure the copyright.

² The article must be one not patented or described in any printed publication in this or any foreign country prior to the invention, and not in public use or on sale in the United States for more than two years prior to the application.

³ The fee on filing an application for a patent is fifteen dollars; on issuing the patent, twenty dollars. All patented articles must be marked with the word "patented," together with the exact date on which the patent was granted.

Upon receipt at the Patent Office, the application is referred to the proper examiner to decide whether the article is an invention, and whether it possesses novelty and utility.¹ If the examiner reports favorably, the patent is issued; if his decision is adverse, the applicant may appeal to the board of examiners, and from their decision to the commissioner of patents, and finally to the court of appeals of the District of Columbia.

An infringement of a patent consists in wrongfully making, using, selling, or otherwise dealing with a patented invention.

Infringements of patents give rise to much litigation, and in such cases the patentee has two remedies: he may sue at law for damages; or may apply to a court of equity for an injunction restraining the infringer from continuing his acts, praying also for damages for the injuries sustained.

The Patent Office with its collection of valuable models is one of the most interesting of the government bureaus. The office performs an economic service of the highest importance in encouraging invention; and it is estimated that one third of the world's important inventions originate in the United States. Since 1837 nearly one million patents have been issued.

520. Trade-Marks. By acts passed in 1870 and 1876, Congress attempted to establish a universal system of trade-mark registration in order to secure to owners of trade-marks the exclusive right to their use. These acts were held unconstitutional by the Supreme Court, since a trade-mark is not an invention, discovery, or writing within the meaning of the clause of the constitution relating to patents and copyrights. Further, the acts could not be sustained under the commercial power, because they were not limited to trade-marks used in foreign and interstate commerce. In 1881, Congress passed a statute dealing with the same subject, but limited in its scope to trade-marks used in foreign and interstate commerce.

521. Weights and Measures. Although expressly authorized by the constitution to fix the standard of weights and measures, Congress has done little

¹ The requirement as to utility is very liberally interpreted.

in the exercise of this power. Legislation has been enacted providing a standard troy pound for the regulation of the coinage (1828), establishing uniform standards for use in the customs and internal revenue service, and making permissive but not obligatory the use of the metric system (1866).¹

In the absence of exclusive congressional legislation, each State has the right to adopt its own standard of weights and measures. The States have retained the old English standards, instead of adopting the metric system used throughout the greater part of the civilized world. Whenever Congress sees fit to establish a national standard, these State laws will be superseded, just as in the case of a national bankruptcy law.

522. Federal Power over Crimes. The power of Congress to define and punish crimes is either expressly granted by the constitution, or necessarily implied in the grant of other powers. Authority is expressly conferred to deal with the following crimes: (1) counterfeiting; (2) piracies and felonies committed on the high seas; (3) offenses against international law; and (4) treason.

Congress has implied power over a large number of crimes, this authority being indispensable to the effective exercise of the law-making function. Thus the power to establish post offices and post roads necessarily implies power to punish the crime of robbing or obstructing the mails; the power to levy customs duties and excises requires provision for penalties at every step; and many similar examples could be added.

523. Counterfeiting. Congress is expressly empowered to "provide for the punishment of counterfeiting the securities and current coin of the United States."² Counterfeiting includes not only the manufacture of forged coins

¹ In 1901 Congress established a national bureau of standards, which has since been made a bureau of the Department of Commerce and Labor. This bureau is the repository of the national standards; and to carry on its work a corps of specialists has been employed, and laboratories have been equipped with measuring apparatus and other instruments.

² *Constitution*, Art. I, Sec. 8, Par. 6.

and securities, but also passing them when made, or having them in possession with intent to pass them. The term also includes the counterfeiting or passing counterfeits of excise and postage stamps, stamped envelopes, postal cards, letters patent, postal money orders, custom-house certificates, land-warrants; and also the coins, notes, and bonds of foreign governments.

524. Piracy. Congress is empowered to define and punish piracies and felonies on the high seas, and offenses against the law of nations. Piracy as the word is used in international law denotes robbery or forcible depredations committed on the high seas. The jurisdiction of a country over the adjacent sea ordinarily extends to a line three miles beyond low-water mark; but the high seas or ocean lying outside this line form the highway of nations, subject to their common jurisdiction. Pirates may be lawfully captured on the ocean by the ships of any nation, and every country has jurisdiction to punish them, since they are regarded as the common enemies of mankind. The universal penalty for piracy is death.

Since Congress has power to define piracy, it may enlarge the definition so as to include other crimes than piracy as known to the law of nations. Accordingly, Congress has provided that certain other offenses shall be deemed piracy, such as the slave-trade, murder on the high seas, and acts of hostility against the United States or its citizens under color of a commission from a foreign state.

525. Offenses against the Law of Nations. Congress also has power to punish offenses against the law of nations.¹ Instances of the exercise of this power are to be found in the neutrality laws which forbid the fitting-out of armed vessels, or the enlisting of troops within the United States for the use of a belligerent power. Another example is the law

¹ International law, or the law of nations, is "a body of rules and precedents governing nations in their relations with one another, resting on the common consent of the civilized world." — Hinsdale, B. A., *American Government*, p. 225.

which prohibits the organization within the boundaries of the United States of armed expeditions against friendly nations.

526. **Treason.** Since treason aims at the very life of government, it has always been considered the most serious of crimes, and punished with the severest penalties. At the ancient common law, the definition of treason was left largely to judicial discretion; and as a result many offenses were included in the class of constructive treason, subjecting those who committed them to the most barbarous punishment. Finally in the reign of Edward III, Parliament swept away the doctrine of constructive treason by a statute declaring and defining all the different branches of treason.

Common-law treason

Similarly the framers of the constitution, in order to prevent legislative or judicial extension of the term, inserted in that instrument the definition of treason as consisting only in levying war against the United States, or adhering to its enemies, giving them aid and comfort. To constitute this crime, war must be actually levied against the United States; a conspiracy to subvert the government by force, although criminal, is not treason.¹ As an additional safeguard to a person accused of treason, the constitution declares that there shall be no conviction except on the testimony of two witnesses to the same overt act, or on confession in open court.

Treason under the constitution

Death in the most terrible form was the common-law punishment for treason, besides corruption of blood and forfeiture of the estate of the offender. Corruption of blood meant the destruction of all inheritable qualities in the person, so that he could not succeed as heir to any lands, nor could others inherit property from

Penalties

¹ "On the contrary, if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are traitors. And one is adherent to the enemies of the country, and giving them aid and comfort, when he supplies them with intelligence, furnishes them with provisions or arms, treacherously surrenders to them a fortress, and the like." — *Ex parte Bollman*, 4 Cranch, 75.

or through him. His estate was permanently forfeited to the crown. These severe punishments were prohibited by the constitution, which provides that no attainder (conviction) of treason shall work corruption of blood; while forfeiture of estate is permitted only during the lifetime of the person convicted. The penalty for treason under existing laws is death; or at the discretion of the court, imprisonment for five years at hard labor, with a fine of not less than \$10,000, and perpetual disqualification for office under the United States.

GENERAL REFERENCES

- Andrews, Jas. D., *American Law* (1900), ch. xviii.
 Ashley, R. L., *The American Federal State* (1903), pp. 212-218, 270, 278, 280, 309.
 Black, H. C., *Constitutional Law* (1897), pp. 207-219, 600-603.
 Cooley, Thos. M., *Constitutional Law* (1898), pp. 88-89, 94-97, 104.
 Hart, A. B., *Actual Government* (1903), pp. 16-21, 492-496, 578.
 James, J. A., and Sanford, A. H., *Government in State and Nation* (1903), pp. 222-232.
 McClain, E., *Constitutional Law* (1905), pp. 92-99, 173-181.
 Pomeroy, J. N., *Constitutional Law* (1888), secs. 385-407, 413-440.
 Story, Joseph, *Commentaries on the Constitution* (5th ed., 1905), secs. 1102-1115, 1151-1167, 1295-1301.
 Tucker, J. R., *The Constitution of the United States* (1899), II, pp. 558-565, 572-573, 616-624.

QUESTIONS AND EXERCISES

1. Describe fully the Alien and Sedition laws. What were the political results of these measures?
2. Should our present requirements for naturalization be increased? Give reasons.
3. Can persons of all races become naturalized?
4. How may an American citizen lose his citizenship?
5. When the father of a family becomes naturalized, what is the status of his children of foreign birth? Of those born in the United States?
6. Give arguments for and against a federal bankruptcy law.
7. What recent change has been made in the term for which copyrights are granted? Why do foreign authors complain of our copyright law?
8. Name five of the greatest inventions patented by Americans.
9. What arguments can you give for and against the establishment by federal law of the metric system of weights and measures?
10. How may a trade-mark be protected?
11. Give historical examples of treason against the United States. What punishment was imposed?
12. Name several crimes against federal law. What court has jurisdiction over these offenses?

CHAPTER XXXVI

HISTORY AND ORGANIZATION OF POLITICAL PARTIES

527. Importance of Political Parties. In the United States political parties are the great motive force by which the machinery of government is moved. Federal and State constitutions and statutes form the legal foundation of government; but even the provisions of the written constitution have been profoundly modified through the action of party organizations. In both legislation and administration, the will of the people is generally expressed, however crudely, through the agency of political parties. Hence some knowledge of party history and organization is essential to a clear understanding of our institutions and government; for broadly speaking, it is by the parties that the business of government is conducted, and it is largely owing to their influence that our political institutions have assumed their present form.

Motive
power of
government

528. Functions of Parties. Four principal functions are performed by parties in carrying on the work of government. (1) Parties afford a means of crystallizing and unifying public sentiment upon the questions of the day.¹ The men united in a party are usually in substantial agreement upon certain policies, and by the adoption of a party platform these principles are placed before the voters for approval or rejection. (2) Parties supply the machinery by which the great majority of elective officers are nominated, thereby enabling the party voter to cast his ballot for candidates of his own political faith. (3) They are the agencies by which political campaigns are conducted, the manage-

¹ "The true office of the elaborate apparatus used to work up popular excitement over party issues is to energize the mass of citizenship into political activity." — Ford, H. J., *The Rise and Growth of American Politics*, p. 305.

ment of which is entrusted to various party committees. (4) Parties provide an agency for the control of executive and legislative policies and agents.¹ Under our system of distributing powers among the several departments of government, parties afford a valuable means of unifying and harmonizing the legislative and executive branches. If a party secures control of both these departments, it thereby becomes morally responsible for carrying out the policies outlined in its platform. Hence, although executive and legislative officers possess independent powers under the constitution, they must work in harmony to carry out the policies of the political party to which they owe a common allegiance.

529. Origin of Parties. The history of our political parties commences with the Constitutional Convention of 1787. The first issue which led to the rise of parties was the question of the formation and adoption of the federal constitution. One party, the Nationalists, later called the Federalists, favored a strong authority to which the States should be distinctly subordinated. Another group, composed chiefly of delegates from the small States, maintained that the several commonwealths ought to retain all the important powers of government, the national government controlling only such matters as foreign relations and national defense.

530. The Federalists (1788-1816). The Federalists came into power upon the ratification of the constitution, and remained in control of the government until 1801.² Their chief support came from the commercial classes of New England and the small Middle States, and from the wealthy and conservative class in general. In foreign affairs the Federalists favored Great Britain, viewing French republicanism with alarm and dread. Their party stood especially for three principles: first, a strong central government; second, a liberal construction of the constitution so as to extend as widely as possible the powers of the federal government;³ and third, rule by the leaders.

¹ "The occasion for it (party organization) was the need of means of concentration so as to establish a control over the divided powers of government. Party machinery was devised under the stimulus of necessity and has been submitted to because there was no help for it." — Ford, H. J., *The Rise and Growth of American Politics*, p. 297.

² Although Washington was not a member of either party, he was by force of circumstances as well as by natural inclinations practically in accord with the Federalists.

³ Hence the party is sometimes called a liberal or loose construction party.

The aristocratic tendencies of the Federalist party foredoomed it to failure with the growth of the spirit of democracy. The enactment of the Alien and Sedition laws was a serious political blunder, and the party never regained control of the government after its defeat in 1800. With the close of the War of 1812 (to which the Federalists had been bitterly opposed), that party disappears from our political history. Downfall

531. The Democratic-Republican Party (1788-1820). After unsuccessfully opposing the ratification of the constitution, the anti-federalists accepted the situation, but insisted that the terms of that instrument should be so construed as to forbid an extension of the powers of the federal government beyond those expressly granted. Soon this party became known as the "Republican" or "Democratic-Republican," because of its sympathy with the Republican party in France. In earlier years it derived its main support from the South and the agricultural classes, as well as from the poorer class generally. Origin

Its main principles were first, a strict construction of the federal constitution, so as to restrict to a narrow field the powers of the national government; and second, rule by the common people, with especial care for the rights of individuals.¹ Principles

The Democratic-Republican party had continuous control of the government from 1801 until 1825; but the force of circumstances during these years compelled a considerable modification of its principle of opposition to the extension of federal power. When the Federalists were in power, such policies as the assumption of State debts, the establishment of a United States Bank, and the adoption of a system of indirect taxation were denounced by the Republicans as unwarrantable usurpations of power. But on gaining control of the national government, Jefferson and his followers did not hesitate to extend the domain of federal power. The Embargo Act and the annexation of Louisiana proved that whatever their theoretical principles as a party of opposition, the Republicans would not hesitate to adopt a strong national policy when in power.

532. Reorganization of Parties (1820-1830). The reëlection of Monroe in 1820 by every electoral vote save one marked the obliteration of old party lines; and the following decade was a period of transition during which factions were opposed on personal and sectional grounds, rather than on account of party principles. Gradually about 1830 two great parties were again formed, one of which took the name of the Period of transition

¹ As pointed out by Bryce, the Republicans claimed to be the apostles of Liberty, while the Federalists represented the principle of Order.

Democratic party, the other being known first as the National-Republican, and later as the Whig party.

533. The Democratic Party (1830-1856). The new Democratic party, organized under the leadership of Andrew Jackson, adopted the principles and traditions of the Jeffersonian Republicans. It was the champion of States' rights and of a strict construction of the constitution; and hence it opposed the United States Bank, likewise the protective tariff, and the policy of internal improvements carried on by the federal government.

534. The National Republican or Whig Party (1830-1856). Under the leadership of Clay and Webster, the Whigs adopted many of the views formerly held by the Federalists, such as the encouragement of manufactures by a protective tariff, and the expenditure of public money for internal improvements.¹ Throughout most of its history the Whig party was one of opposition. Although it succeeded in electing two Presidents, only once did it have both the Presidency and Congress within its control; and on that occasion the death of Harrison and the succession of Tyler (who was in fact a Democrat) prevented the adoption of Whig policies. The party was discredited by the Compromise of 1850, and became hopelessly divided upon the slavery issue. It received a crushing defeat at the presidential election of 1852, and in the same year the death of its great leaders, Clay and Webster, marked its final overthrow.

535. Second Reorganization of Parties (1852-1860). By 1850 slavery had become the one great political question in spite of the efforts of the parties to evade the issue. During the next few years parties were reconstituted on the question of the extension of slavery. By this time the Democratic party had passed under the control of the pro-slavery element. The presidential elections of 1852 and 1856 resulted in the choice of Democratic candidates; but in the election of 1860 the party was divided upon the slavery issue, the Northern wing of the party nominating one candidate, and the Southern wing another.

Meantime a new party organization had come into existence, formed out of various elements opposed to slavery — the abolition Whigs, the anti-slavery Democrats, the Liberty party, and the Free Soilers. This was the Republican party, which, although unsuccessful in the election of 1856, succeeded in electing Abraham Lincoln in 1860. The Re-

¹ The Whigs, like the Federalist party, derived their chief support from New England and the small Middle States.

publicans proclaimed as a fundamental principle the right and the duty of Congress to prohibit slavery in the territories, and the success of their party at the election of 1860 was soon followed by the secession of eleven slave States.

536. Parties since 1860. Although the great body of Northern Democrats were staunchly loyal to the Union, their party was disrupted by the Civil War, the Republicans remaining in uninterrupted control of the government from 1860 to 1884.¹ Until 1880 the parties were divided principally over issues arising from the Civil War, especially the question of reconstruction. From 1880 to 1892, the tariff question was the prominent issue, the Republicans favoring a protective tariff, and the Democrats a tariff for revenue only. From 1892 to 1900, the silver question was the all-absorbing issue, the Republicans favoring gold monometallism, the Democrats bimetallism at the ratio of 16 to 1. Since 1898, the so-called policy of imperialism, as well as such subjects as the control of corporations, the establishment of postal savings-banks, the taxation of incomes, the conservation of natural resources, and the revision of tariff rates have received considerable attention in party platforms.

537. Minor Political Parties. Many minor or "third" parties have been formed from time to time in our history, and some of these have had a considerable influence upon political affairs. But as a rule voters have accepted the two-party system, and it has been difficult to induce them to vote with a third party. Among the more important minor parties, all of which have long since ceased to exist, are the Anti-Masonic party of 1828-32, the Liberty party of 1840, the Free Soil party of 1848, the Know-Nothing or American party of 1854, the Liberal Republicans of 1872, and the Greenback party of 1876.

Of the existing minor parties the oldest is the Prohibition party (founded in 1872), which aims to secure the suppression of the liquor traffic throughout the United States. Other important minor organizations are the Socialist-Labor party, which has held national conventions since 1892, and advocates the adoption of a complete socialistic programme; the Socialist party, which was formed from a faction of the Socialist-Labor party, and advocates similar policies; and the People's or Populist party, which was formed about 1892, advocating as its chief principle the free coinage of silver. Of the minor parties in existence since the Civil War, the People's party alone has been successful in carrying the electoral vote of any State.

¹ In 1884 and again in 1892 the Democrats were successful in electing their candidates, these being the only two Democratic administrations since the Civil War.

538. Organization of Parties. The two chief instruments in the management of parties are the party convention and the standing committee. Although it represents the supreme authority of the party, the convention is only a temporary body, and hence a more permanent agency is needed to carry on the everyday business of party management. Accordingly the convention elects standing committees — national, State, and local — which manage party affairs until the assembling of the succeeding convention. Such matters as the nomination of candidates and the formulation of party platforms are reserved for the convention itself; while to the several party committees are entrusted the calling of conventions, the management of campaigns, the organization of political clubs, and the general control of the party's interests.

At the head of the permanent party organization is the national committee, consisting of one member from each State and territory. This committee is chosen every four years at the national convention, each State and territorial delegation being entitled to one representative. The national committee may appoint a smaller executive committee, which carries on the presidential campaign under the direction of the national chairman. Other important functions of the national committee are the choice of a place of meeting for the ensuing national convention, and the selection of its temporary chairman.¹

Independent of the national committee, but acting in harmony with that body, is the State central or State executive committee. This is composed of representatives from each congressional or State senatorial district, or of members chosen by the State convention, or elected by the several county conventions. The chief functions of the State committee are to fix the time and place

¹ Another party committee national in character is the congressional committee, appointed at a joint or separate caucus of the members of each party in the Senate and House. This committee includes members from each State and territory which has representatives in either house. Its special function is to coöperate with the local committees during congressional campaigns, its efforts being directed especially toward carrying doubtful districts.

for the meeting of the State convention, to arrange the preliminary work of that body, to wage the party's campaign in the State, and in general to advance the party's interests.

The local party committees include county, township, city, and sometimes even ward and precinct committees; and there is also a committee for each congressional district. Members of local committees are Local committees generally chosen either by the voters at a party primary, or by county or city conventions. The local committees issue the call for the party primary, and often determine the rules under which it is held. Hence they exercise important powers, since the local primaries form the basis of the entire nominating machinery.

539. The Party Machine. This hierarchy of committees is usually spoken of as the "machine" or "organization." Much criticism is directed against the machine Source of power because too frequently it goes beyond its legitimate functions of serving the party, and seeks to perpetuate its own power by dictating nominations, thus indirectly controlling a large number of elective and appointive officers. In order to accomplish this result, the machine must control the primaries, since only in this way can delegates be elected who are favorable to the wishes of the organization. Hence local committees often make up a ticket or slate previous to the primary, and endeavor to secure the election of certain individuals as convention delegates. This usurpation of power is frequently successful, owing to the lack of interest taken by the ordinary voter in party management; and hence control of nominations and party policies is largely in the hands of committees which in theory are only the agencies for carrying out the will of the voters.

Within recent years there has been a marked tendency for political organizations to pass under the control of a single person. Owing to his superior political The "Boss" skill and sagacity, some leader often wins the title of "Boss" by establishing himself as the chief controlling

factor in local or even State party affairs. Large cities have commonly been the most favorable fields for the Boss and for machine control generally, because of the numerous offices and the frequent opportunities to secure illicit gain.¹ Sometimes the sphere of the Boss is larger than the city, including the entire State.

Unrepresentative nominations 540. **Party Responsibility.** The great problem in American politics is to make the political party virtually as well as nominally responsible to its members. Too often the political prerogatives of the ordinary citizen are confined to choosing between candidates for office who have been nominated by the small group of politicians in control of each party. The right to choose between two candidates in whose nomination the voter has had nothing to say may be democratic government in form, but it is not in substance. Since the parties control the government, it is essential to representative rule that the parties themselves be effectually controlled by their members.

Opposition to machine control Serious abuses on the part of the machine generally end in a revolt within the ranks of the party, many of whose members finally support opposing candidates as a rebuke to machine methods, or else form an organization within their own party with which to oppose the machine. Direct nominations constitute the most promising means of checking excessive control by the party organization; but up to the present time no remedy has been devised which will entirely prevent the evils resulting from the tendency of party organizations to dominate rather than to serve their party.²

¹ Bryce enumerates the following conditions as tending to give rise to rings and bosses: (1) the existence of a spoils system. (2) Opportunities for illicit gains arising out of the possession of office. (3) The presence of a mass of ignorant and pliable voters. (4) The insufficient participation in politics of the good citizens. — Bryce, James, *The American Commonwealth*, II, p. 120.

² "The great need in American politics to-day is that young men of high ideals and resolute purposes for good government should devote themselves to political activity, standing up stoutly and constantly for honest government, high ideals in politics, and that active participation in political life by which better government is brought to pass." — Woodburn, J. A., *Political Parties and Party Problems in the United States*, p. 303.

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), ch. XXIII.
 Beard, C. A., *American Government and Politics* (1910) ch. VI.
 ——— *Readings in American Government and Politics* (1910), ch. VI.
 Bryce, James, *The American Commonwealth* (1907), II, chs. LIII-LVI, LIX-LXV.
 Ford, H. J., *The Rise and Growth of American Politics* (1898), chs. VII, XXIII-XXV.
 Fuller, Robert H., *Government by the People* (1908), ch. XI.
 Goodnow, F. J., *Politics and Administration* (1900), chs. II, VI, VIII-IX.
 Hart, A. B., *Actual Government* (1903), ch. v.
 Johnston, Alexander, *History of American Politics* (1902).
 Lodge, H. C., *Historical and Political Essays* (1892), pp. 198-213.
 Macy, J., *Party Organization and Machinery* (1904).
 ——— *Political Parties in the United States* (1900).
 Morse, A. D., *History of Political Parties* (1903).
 Ostrogorski, M., *Democracy and the Organization of Political Parties* (1902).
 Wilson, Woodrow, *Constitutional Government in the United States* (1908), ch. VIII.
 Woodburn, J. A., *Political Parties and Party Problems in the United States* (1909).

QUESTIONS AND EXERCISES

1. Define a political party, and describe the functions which it performs.
2. Prepare a report upon the principles and leaders of the Federalist party.
3. Describe the principles of Jefferson and the Democratic-Republican party.
4. What were the political principles of the Whig party?
5. Give an account of the rise of the present Republican party.
6. Describe the political parties and issues in the campaign of 1860.
7. State which political party has generally favored and which one has opposed the following policies: (a) liberal construction of the federal constitution; (b) a protective tariff; (c) a national banking system; (d) internal improvements by the federal government; (e) restriction or abolition of slavery; (f) severe measures in "reconstructing" the seceding States; (g) resumption of specie payments; (h) gold monometallism; (i) colonial expansion.
8. Who represents your State upon the national and congressional committees of each party?
9. How many members compose the Democratic State committee in your commonwealth? The State committee of the Republican party? How are the members of each committee chosen?
10. Who are the members of your local party committees in your county, city, ward, and precinct? How are these chosen?
11. Describe the work and powers of each of these committees with reference to: (a) calls for party primaries and conventions; (b) filling vacancies on the party ticket; (c) raising and expending campaign funds; (d) arranging political meetings; (e) canvassing voters, and "getting out the vote" on election day.
12. What do you understand by the party machine? The party boss? Name the chief party leaders in your community.

13. Describe the work performed by the party machine. (Bryce, James, *The American Commonwealth*, II, pp. 90-96.)
14. Describe some of the abuses of party organization and methods.
15. What were the principal issues between the two parties at your last State election? Who were the leading candidates of each party? Results of the election?
15. Give the same facts with regard to your last municipal election.
16. In the choice of local officers, which is of greater importance to the voter — that a candidate belongs to a particular party, or that he possess a high degree of honesty and ability? Should party politics have any part in local elections?
17. Are members of your board of education chosen on a party ticket, or nominated by petition and chosen by ballots which contain no party emblems or names? Give arguments in favor of the latter method.
18. Answer the same question with regard to candidates for the judiciary in your State.
19. What are the arguments in favor of fewer elective offices and short ballots? (Kaye, P. L., *Readings*, pp. 384-391.)
20. In your State are candidates for office required to file a statement of their election expenses? What is the object of such a provision?
21. Report upon the methods of suppressing political corruption. (Kaye, P. L., *Readings*, pp. 513-525.)
22. Is there a corrupt practices act in your State? If so, give its chief provisions.



(By courtesy of Collier's Weekly)

THE COLISEUM, CHICAGO

The meeting-place of the Republican National Convention, 1908.



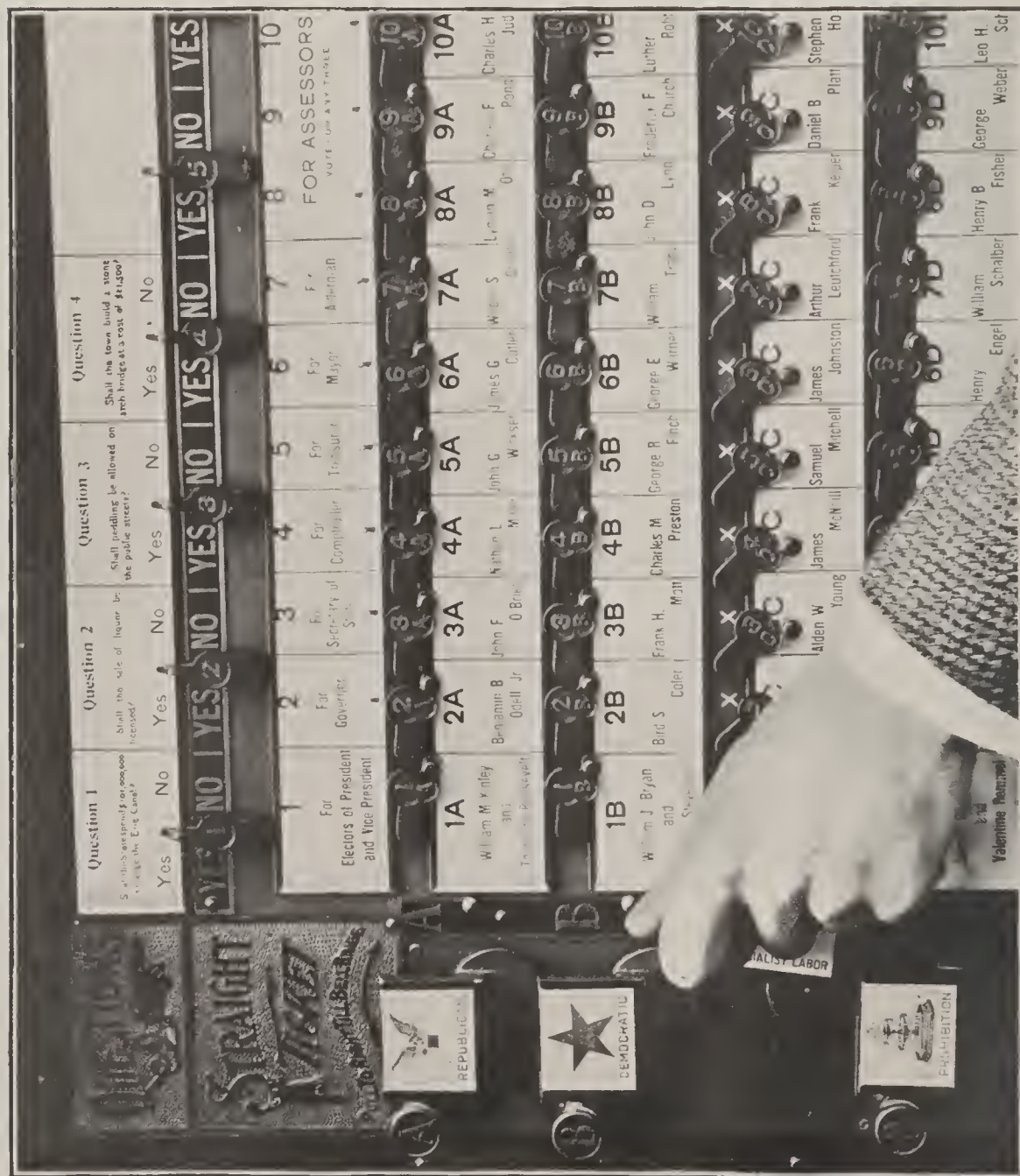
A POLITICAL PARADE

An effective campaign method.

(By courtesy of the Empire Voting Machine Company)

THE DIAL OF A VOTING MACHINE

A straight party ticket is here being voted. The voter has pulled the lever at the end of his party row, so that all the pointers in that row are turned down toward the names of the candidates. A bell rings when the lever has been pulled far enough to operate the registering machinery. Each voting machine is enclosed within a curtain which automatically locks when the voter closes it after entering, and which cannot be opened until a vote of some sort has been cast. When the voter opens the curtain, after voting, to leave the machine, the pointers are automatically returned to their original positions. A ticket may be split by turning back (up) the pointer over the name of the candidate whom he wishes to scratch and then turning down the pointer over the name of the other candidate for whom he wishes to vote. To vote on Questions, the pointer below each question is turned toward "Yes" or "No." A single operation of the party lever records a vote of any sort — straight, split, or on the Questions.



CHAPTER XXXVII

NOMINATIONS AND ELECTIONS

541. Methods of Nomination. Throughout the United States, candidates for office are commonly nominated either by the party primary or by a nominating convention. While other methods of nomination are sometimes employed (such as nomination by petition), the primary and the convention are the two great agencies by which party nominations are made.

**Primary
and
convention**

542. The Party Primary. The primary, or primary election, is either a deliberative meeting or a virtual election held by the political partisans of a small area, such as a rural township, or a city ward or precinct.

Functions

Generally, the primary performs a twofold function: (1) that of nominating candidates for local offices within its boundaries; and (2) of electing delegates to conventions which nominate candidates from larger areas, such as the city, or county, or congressional district.

Thus the primary is the foundation of the entire system of nominating machinery, since it directly nominates certain local officers, and indirectly — through delegate conventions — nominates all others. Even the great national conventions proceed from the local primaries; for they are composed of members chosen by State or congressional district conventions, the delegates to which have been elected at local primaries.

Importance

Recognizing the importance of party primaries in our system of popular rule, many States have passed laws which in effect make the primary a part of the machinery of government. Such laws com-

**Legal
regulation of
primaries**

monly prescribe the qualifications of those who may participate, the time and place of holding the primary, its organization and general management. The object of such legislation is to secure to each party member his right to participate in the primaries and to have his vote fairly counted. In the absence of legal regulation, the primary is conducted in accordance with party rules and customs.

543. Types of Primaries. In New England and several States elsewhere, the primary (or caucus) is virtually a **Town-meeting type** town-meeting of the party voters. The call (issued by the local committee) requests the party members to assemble at a certain time and place for the purpose of nominating candidates for local offices, electing delegates to conventions, selecting local committees, and transacting other party business. This form of primary is adapted only to comparatively small districts, such as towns, wards, or thinly settled rural counties.

The second type of primary (which prevails generally throughout the United States) is in fact an election, the **Primary election** only important difference between it and the regular election being that the primary is confined to the voters of a single political party. The polls are open as on election day, and the person receiving the highest number of votes for any particular office is thereby nominated.

544. Local Nominating Conventions. A nominating convention is a meeting of delegates who have been chosen **County conventions** for the purpose of nominating candidates for certain offices, and transacting other party business, such as the appointment of committees and the adoption of a platform. Delegates to county conventions are ordinarily chosen at primaries held in the various townships or wards. County conventions nominate the candidates for the various county offices, as the county commissioner, sheriff, treasurer, auditor, register of deeds, district attorney, and (in many commonwealths) the judges of the county courts. Frequently they also elect delegates to the State

convention, and choose the members of the county committee.

In municipal elections, party lines are often drawn almost as closely as in State or national elections, notwithstanding the non-political character of most local business. The municipal officers elected by popular vote generally include the mayor, members of the council and school board, treasurer, city solicitor, and street commissioner. These officials are commonly nominated at municipal conventions composed of delegates chosen at party primaries in the various wards or election precincts of the city.¹ **Municipal conventions**

545. Judicial and District Conventions. For the election of judges of the county courts, the State is generally divided into districts which include several counties; and candidates for these judgeships are ordinarily nominated in judicial conventions within each district. **Judicial nominations**

For the choice of members of the legislature, many States are divided into senatorial and also into smaller representative or assembly districts; and legislative candidates are nominated by conventions composed of delegates chosen at primaries in the townships or wards within the district. In other commonwealths, the county is taken as the basis of apportionment in one or both houses — each county being entitled to a certain number of senators or representatives; and in these States candidates for the legislature are generally nominated by the county convention. **Legislative nominations**

546. State Nominating Conventions. The State convention ordinarily consists of several hundred delegates chosen by party voters either directly at the primaries, or indirectly through county or district conventions. The State convention nominates the officers elected by the people of the State at large, including the governor, lieutenant-governor, secretary of State, treasurer, and in most commonwealths, an auditor, attor- **Officers nominated by State conventions**

¹ But in many cities the candidates for municipal office are chosen directly at the primaries, each party voter casting his ballot for the candidates of his choice, those receiving a plurality becoming the party nominees. Nomination by petition is also permitted in many cities, especially for members of the board of education.

ney-general, superintendent of public instruction, State engineer, surveyor, and judges of the supreme court.

The call for a State convention is issued by the State central committee of the party, and a copy is sent to the chairman of each local committee. The call sets forth the time and place of the convention, and the number of delegates to which each city, township, or county is entitled. Generally, representation of the different counties or municipalities is based (at least in part) upon the vote cast for the party candidates at the last State or national election; and thus the localities which cast a large party vote are rewarded by increased representation and influence in the State convention.

On the appointed day, the convention is called to order by the chairman of the State committee, who requests the secretary of that committee to read the call. Proceedings are then formally opened with prayer, after which motions are usually carried for the appointment by the chair of a committee on credentials, a committee on permanent organization, and a committee on resolutions. In some cases a temporary chairman and secretary are chosen, but frequently the chairman and secretary of the State committee serve as temporary officers until the report of the committee on permanent organization. The permanent officers of the convention include a president, secretary, assistant secretaries, sergeant-at-arms, and numerous vice-presidents. The president of the convention is generally a prominent party leader, and upon taking the chair he delivers a "keynote" speech upon the issues of the campaign.

Then follows the report of the committee on credentials, containing a statement of the number of delegates present, and rendering a decision concerning contested seats. The platform is next read by the chairman of the committee on resolutions, and is ordinarily accepted without amendment.

The convention then takes up its most important work — the nomination of candidates. The chair appoints a committee of tellers to take charge of the balloting, whereupon nominations for the office of governor ^{Naming the candidates} are declared in order.¹ After the nominating speeches have been made, the balloting commences. When a candidate receives the number required for a choice, generally a majority of all votes cast, it is customary for one of the supporters of a defeated rival to move that his nomination be made unanimous. This motion commonly prevails, and the convention then proceeds with the nomination of candidates for other State offices. During the intervals between the ballots, short speeches are often made by prominent party leaders in response to an invitation from the chairman. Toward the close of the proceedings, all the nominees are sometimes escorted to the platform by a committee appointed for that purpose; and upon presentation by the chairman, each candidate in turn responds in a short speech.

State conventions ordinarily select the members of the State committee to serve until the next conven- ^{Other functions} tion, and in presidential years nominate the four delegates at large to the national convention.

547. Presidential Nominating Systems. Three methods of nominating candidates for the Presidency have prevailed in the United States: (1) by congressional caucus, or meeting of the party members of the two houses of Congress (1800–1824); (2) by State legislatures, acting either in an official capacity or as a legislative caucus (1824–1832); (3) by national nominating conventions, composed of delegates chosen for the special purpose of nominating presidential candidates (1832 to the present time).

548. The Call of National Conventions. Each political

¹ The entire proceedings of the convention up to this point, including the choice of permanent officers and of members of the several committees, are commonly prearranged by the State committee. The advantage of this prearrangement is that it materially shortens the time necessary for the preliminary work of the convention; its great disadvantage is that State committees sometimes abuse their power, and control not only the routine work of the convention, but the nominations as well.

party holds its national nominating convention in the summer of the year in which the presidential election occurs. The call is issued by the national party committee, which body determines the time and place for the convention. The call specifies the number of delegates to which each State is entitled, and how they shall be elected. The present practice of both Republican and Democratic parties allows each State twice as many delegates as it has electoral votes, representation also being accorded each territory.

549. The Delegates. A copy of the official call is sent to each State party committee, whereupon that committee calls a State convention for the purpose of nominating the four delegates at large from each State. The State committee also notifies the local committees in the different congressional districts throughout the commonwealth, and these call congressional district conventions to choose the two delegates to which each district is entitled.¹ Delegates to both district and State conventions are chosen at local party primaries.

Long before the meeting of the convention, the names of various prominent men are suggested for the Presidency. Friends of the leading candidates organize in each commonwealth, and endeavor to influence State and district conventions to instruct delegates in favor of the candidate of their choice. Estimates are given out from time to time of the comparative strength of the several candidates, and the contest for delegates continues until all have been chosen. As a rule it is impossible to foretell with certainty who will be the actual nominee of the convention, since many State delegations are unpledged, while others are instructed in favor of local candidates who

¹ This is the usual, but not the invariable method. In New York and several other commonwealths, the Democratic State convention chooses the entire State delegation. The Republican party, on the other hand, requires that each congressional district elect its delegate to the national convention in the same way that nominations for Congress are made in the district. Thus Democratic practice emphasizes the State as a unit in party organization, while the Republican rule emphasizes the importance of the congressional district.

are unlikely to receive general support. After all the delegates have been chosen, the convention city itself becomes the seat of war. The supporters of the leading candidates are early in the field, opening their headquarters in the prominent hotels; and they endeavor by all possible political devices to win the support of the delegates.

550. Procedure in National Conventions. It has become customary to hold the national conventions of the two great parties in immense auditoriums so as to accommodate ten or fifteen thousand spectators, in addition to nearly two thousand delegates and alternates. Local preparations are in charge of a committee of citizens of the convention city. **Auditoriums**

Toward noon on the day appointed in the official call, the convention is called to order by the chairman of the national committee. The proceedings are opened with prayer. The call is then read, after which the national committee reports a list of the temporary officers of the convention, consisting of a temporary chairman, secretary, clerks, sergeants-at-arms, and stenographers. This list is generally accepted by the convention without contest, whereupon the chairman of the national committee yields his place to the temporary chairman, who usually addresses the convention in a formal speech on the political situation. **Temporary organization**

A resolution is next adopted that the convention be governed by the rules of the preceding convention until otherwise ordered. Motions are made and carried for the appointment of a committee on credentials, one on permanent organization, one on rules, and a committee on resolutions, each consisting of one member from each State and territory. Resolutions concerning contested seats are now presented to the convention, and referred without debate to the committee on credentials. The appointment of these committees ends the important business of the first session. **Appointment of committees**

When the convention assembles for the second session, the first business in regular order is the report of the committee on credentials. In deciding cases of contested seats, the committee on credentials gives each side an opportunity to present its claims, and then decides between them — generally in favor of the regular delegates (that is, those indorsed by the State and district committees). In case of two full contesting delegations from the same State, seats are sometimes given to both sets, each delegate being entitled to one half a vote. After the **Report on credentials**

credentials committee has arrived at a decision concerning contested seats, its report, including a list (arranged by States) of all delegates entitled to seats, is generally accepted by the convention with little debate.¹

The next business in order is the report of the committee on permanent organization, which consists of a list of the permanent officers of the convention, previously arranged to some extent by the national committee. This report is ordinarily adopted as a matter of course, and a committee is appointed to escort the permanent chairman to the platform. On taking the chair, the permanent chairman delivers a "keynote" speech on the issues of the approaching campaign.

The committee on rules then reports the order of business for the convention to follow, and its rules of procedure. Two rules of great importance are peculiar to Democratic conventions. The first of these is the rule requiring for the nomination of candidates two thirds of the whole number of votes in the convention. The second is the so-called unit rule, under which a majority of each State delegation is allowed to cast the entire vote to which the State is entitled, even against the protest of a minority of the delegation.²

While awaiting the report of the committee on resolutions, the convention disposes of miscellaneous business, such as the election of national committees, and of the committees on notification. These committees ordinarily consist of one delegate from each State and territory, the members being designated by the respective delegations.

About the third day, the committee on resolutions is ready to report the platform. This is a formal statement of the party's attitude upon the public questions of the day, and next to the nomination of candidates, is the most important part of the convention's work. The platform is usually adopted as read, although it sometimes occasions an exciting contest.³

551. The Nomination of Candidates. Nominating pro-

¹ In some instances the committee's report is the occasion of vigorous discussion and an exciting contest, as at the Republican convention of 1880, whose debate upon contested seats occupies one hundred pages in the published proceedings.

² The unit rule was abandoned by the Republican party in 1880.

³ "Great art is employed in framing platforms so as to be susceptible to various interpretations. Concerning issues which are settled, party speaks in a clear, sonorous voice. But on new issues it mumbles and quibbles. . . . If the issue cannot be dodged, straddling may be resorted to. Declarations really incongruous in their nature are coupled, and their inconsistency is cloaked by rhetorical artifice. Sometimes such expedients are employed as making the platform lean one way and putting on it a candidate who leans the other way, or candidates representing opposing ideas and tendencies are put upon the same ticket." — Ford, H. J., *The Rise and Growth of American Politics*, pp. 330-331.

ceedings are next in order, and these begin with the roll-call of States (arranged alphabetically) for the presentation of candidates for the presidential nomination. Eight or ten candidates are often nominated, since a State delegation frequently thus compliments some favorite son who has very little chance of securing general support. The delegation from any State when called in its turn may pass its right of nomination to any other delegation not yet called. Delegations which have no candidate of their own often second one of the nominations already made. The presentation of names affords the opportunity for long-continued applause, which supposedly indicates the popularity of the respective candidates.

Roll-call for nominations

After the roll-call for nominations is completed, the convention proceeds to the first ballot. As the name of each State is called by the convention secretary, the chairman of the delegation arises and announces the vote of his State.¹ Occasionally a candidate is nominated by acclamation, but often many ballots are necessary to decide the contest. If none of the chief candidates is successful on the first few ballots, it sometimes happens that a "dark horse" (a comparatively obscure man) finally receives the nomination.² As soon as any candidate receives the number of votes necessary for a choice, it is customary for the supporters of the next highest candidate to move that the nomination be made unanimous, this motion being adopted amid wild enthusiasm.

Balloting

After the pandemonium has subsided — sometimes after a recess, the convention proceeds in the same manner to nominate a candidate for the Vice-Presidency. This nomination seldom receives the careful consideration it deserves, and it is often given to a man in the hope that he may be able to carry a doubtful State, or in order to placate a faction in the party which has been opposed to the presidential nominee.

Nominating a Vice-President

As soon as the candidates for President and Vice-President have been named, a motion is carried authorizing the national committee to fix the time and place of the next presidential convention. Provision is made for printing the proceedings, and resolutions of thanks are voted to the citizens of the city and to the various convention officers. The convention then adjourns *sine die*, and the campaign begins.³

Final proceedings

¹ In Republican conventions, if a member of any delegation questions the vote as reported by the chairman, the roll of that delegation is called by the convention secretary.

² Notable instances are the nominations of Polk, Taylor, Pierce, Hayes, Garfield, and Benjamin Harrison.

³ After the convention has adjourned, the committee on notification visits the nominee

552. Presidential Electors. Candidates for the two electors at large to which each State is entitled are nominated at the convention held for the nomination of State officers; or if there are no State officers to be nominated, by a State convention called expressly for this purpose. Generally the candidate for elector in each congressional district is nominated at the congressional district convention; but in some commonwealths a complete electoral ticket for the entire State is nominated by the State convention. Distinguished members of the party who have never held national office are frequently nominated for the office of elector. As already pointed out, the presidential electors exercise no discretion in casting their votes, but simply register the choice of the national nominating convention.

553. Direct Primary System. Although the convention method of nominating candidates is the one in general use throughout the Union, it has been superseded in many States by a "direct primary" system. This plan abolishes the convention entirely by providing that voters at party primaries shall cast their ballots directly for their party's candidates — those individuals being nominated who receive a plurality of all votes cast. The great merit of this plan is that it eliminates the abuses of the convention system, especially machine control, and makes the party really responsible to its members.¹

At first used only for local offices, direct primaries have grown in favor until now, in addition to local candidates, State officers and United States Senators are often nominated in this manner. Oregon and Wisconsin took the lead in adopting the new plan, and their example has since been followed by Florida, Georgia, Iowa, Illinois,

at his home, and the chairman in a brief speech notifies him of the nomination. The candidate replies informally, accepting the honor; and later sends out a carefully written letter of acceptance, which is published and widely circulated as a campaign document.

¹ "The demand for the primary election has come from the feeling that the delegate convention has become corrupt; that the convention is manipulated by rings of professional politicians and office-holders; that "deals" are made and delegates are bought and sold; that a mere handful of men determine the action of the convention, and that the rank and file of the party, who cannot make politics their business and who will not indulge in dishonorable practices, cannot make their influence felt." — Woodburn, J. A., *Political Parties and Party Problems*, p. 283.

Kansas, Michigan, Missouri, Nebraska, New Jersey, Oklahoma, South Dakota, Tennessee, Texas, Washington, and several other commonwealths. Thus nearly one third of the States now employ direct primaries, and the extension of the system appears probable.

554. Nomination by Petition. Another method which likewise does away with the convention is that of nomination by petition, or by nomination papers. This plan is employed in Great Britain, and is a characteristic feature of the original form of the Australian system. In this country it has been used especially for the nomination of members of boards of education, and other non-partisan candidates. Under this plan, a candidate may be nominated by filing with the election officers a petition, signed by the requisite number of voters, who are usually required to pledge that they will support the candidate named in the petition. The great merit of nomination by petition is that it protects the independent voter who cannot participate in party nominations. Moreover, this method makes it possible to oppose objectionable nominees by placing before the voters deserving candidates independently nominated.

555. Elections. National elections are held on the first Tuesday after the first Monday in November. The presidential election occurs every four years counting from 1900, while elections for Representatives are held biennially in even-numbered years. Shortly after the Civil War, acts were passed providing for a large degree of federal control of national elections; but this legislation has since been repealed, so that at the present time the several commonwealths have entire charge of national, as well as of State and local elections.

In most commonwealths, the governor and other State officers are chosen on the first Tuesday after the first Monday in November of the even-numbered years, the State election thus being held on the same day

as the national election.¹ Economy of time, effort, and money is secured by having the election of State and federal officers on a single day; but the drawback to this plan is that State issues are likely to be subordinated to national questions.

In several commonwealths an effort has been made to separate local from State and national elections by holding the local elections at a special time, usually in the spring, or else biennially in the odd-numbered years. The object of this separation is to have local questions decided upon their merits apart from other issues.

Local 556. **Qualifications for Voting.** Under our form of government, the regulation of the voting privilege is left entirely to the States, so long as they do not restrict the right to vote on account of race, color, or previous condition of servitude.² In most commonwealths there are few restrictions upon the suffrage, the general rule being that all male citizens may vote if they have attained the age of twenty-one, and have resided in the State for a period varying from six months to two years — one year being the common requirement. In eleven commonwealths, even aliens are permitted to vote, providing they have declared their intention of becoming citizens.³

Regulation by State Criminals, the insane, paupers in institutions, and Indians not taxed are excluded from the suffrage in practically all of the States. In addition to these obviously necessary disqualifications, about twenty commonwealths have placed further restrictions upon the suffrage. Thirteen States,⁴ nearly all in the South or in New England, prescribe some form of educational test, either ability to read, or to read and write the English language.

¹ State elections are held on a different day from national elections in seven States, namely: Arkansas, Georgia, Louisiana, Maine, Oregon, South Carolina, and Vermont.

² *Constitution*, fifteenth amendment. Congress has of course power to regulate the suffrage in the territories and in the District of Columbia.

³ Alabama, Arkansas, Indiana, Kansas, Michigan, Missouri, Nebraska, Oregon, South Dakota, Texas, and Wisconsin.

⁴ Alabama, California, Connecticut, Delaware, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, North Carolina, South Carolina, Washington, and Wyoming.

Several commonwealths, including Arkansas, South Carolina, Tennessee, and Virginia, require payment of a poll-tax as a prerequisite to voting. In several Western States the suffrage is withheld from the Chinese or persons of the Mongolian race;¹ and in Idaho and Utah, from polygamists. As a general rule persons entitled to vote may also hold office, provided they are of a certain prescribed age, and have lived in the State the requisite period.

557. Woman's Suffrage. Five States, Colorado, Idaho, Utah, Washington, and Wyoming, permit women to vote on equal terms with men. Twenty-one commonwealths permit women to vote at school elections upon the same conditions as men.² Montana allows women taxpayers to vote upon all questions submitted to the taxpayers, Iowa upon the issue of municipal bonds, and New York at town or village elections creating a tax or liability. The present tendency in the United States, and generally throughout the world, appears to be to allow women to vote on equal terms with men.

558. Election Districts and Registration. Two preliminaries are necessary before elections are held — districting and registration. Districting means dividing the civil divisions (counties and townships) of the State into small election districts or precincts containing as nearly as possible an equal number of voters; for example, the laws of New York State provide that there shall be five hundred voters in each election district.

Each of these small subdivisions has a polling-place where voters are commonly required to register their names before the election, and where the ballots are cast on election day. The object of a preliminary registration is to identify individuals in communities where the residents are not personally known to one another; and to

¹ Congress has also passed laws expressly excluding the Chinese from citizenship.

² These are Connecticut, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Vermont, Washington, and Wisconsin.

settle beforehand, if possible, any question as to a man's right to vote. Frequent registration is seldom required in rural districts where the voters are well acquainted with each other, while in the cities annual personal registration is generally necessary to prevent fraud. A voter registers by giving his name, place of residence, age, length of residence in the State, county, and election district, information concerning his nativity, and other material facts serving to establish his identity. Registration is often in charge of a board on which both great parties are equally represented.

559. The Conduct of Elections. In addition to the registration of voters, a large amount of other preliminary work must be performed prior to election day. **Preliminary work** Nominations must be duly certified to the officers charged with the duty of printing the official ballots; polling-places must be designated and provided with ballots; and election officers appointed.

In the cities, general administration of the election laws is often in charge of an election board on which the two great parties are equally represented; elsewhere **Holding the elections** these duties are entrusted to an election commissioner, or to the county or township clerk. Each polling-place is in charge of a certain number of inspectors or judges, aided by clerks, whose duty it is to open and close the polls, to permit only registered persons to vote, to receive and deposit the ballots, to count the votes, and to certify the returns to the proper officials (the board of elections or a similar authority). Each party is permitted to have "watchers" at every polling-place, who witness the casting and counting of the ballots, and challenge any person whom they believe not qualified to vote.

Every precaution is taken to secure a free and honest expression of the will of the voters. In many **Election safeguards** States, electioneering is forbidden within a certain distance (often one hundred feet) of the polling-places;



STATE ELECTION 1910

Tuesday, November 8

OFFICIAL BALLOT

CHATHAM

W^m M. Olin,
Secretary of the Commonwealth.

The Official Ballot for the State election in Massachusetts is printed on paper measuring, usually, about 14 by 10 inches. This is folded the long way, and has the date of the election, the name of the city or town, etc. (as above) printed on the first outside page. On the inside pages are arranged in columns the names and residences of the various candidates, with their party designations. For a facsimile of a portion of such a ballot, refer to the next page; in addition to the candidates shown, this particular ballot contained others for the following State offices: auditor, attorney-general, councilor, senator, representative; and for county commissioner, and county treasurer.

To vote for a Person, mark a Cross **X** in the Square at the right of the Party Name, or Political Designation. **X**

GOVERNOR.....Mark **ONE**.

_____	_____	of _____	.....	Republican	|
_____	_____	of _____	.....	Prohibition	|
_____	_____	of _____	.....	Socialist Labor	|
_____	_____	of _____	.....	Democratic	|
_____	_____	of _____	.....	Socialist	|

LIEUTENANT GOVERNOR.....Mark **ONE**.

_____	_____	of _____	.....	Democratic	|
_____	_____	of _____	.....	Republican	|
_____	_____	of _____	.....	Socialist	|
_____	_____	of _____	.....	Prohibition	|
_____	_____	of _____	.....	Socialist Labor	|

SECRETARY.....Mark **ONE**.

_____	_____	of _____	.....	Democratic	|
_____	_____	of _____	.....	Socialist	|
_____	_____	of _____	.....	Socialist Labor	|
_____	_____	of _____	.....	Prohibition	|
_____	_____	of _____	.....	Republican	|

TREASURER.....Mark **ONE**.

_____	_____	of _____	.....	Democratic	|
_____	_____	of _____	.....	Socialist	|
_____	_____	of _____	.....	Socialist Labor	|
_____	_____	of _____	.....	Prohibition	|
_____	_____	of _____	.....	Republican	|

watchers and challengers are permitted each party during the casting and counting of ballots; election officers are sworn not to attempt to influence any voter in casting his ballot; precautions are taken against "repeating," and against "stuffing" the ballot-box; identification of his ballot by any voter is prohibited;¹ candidates for office are sometimes required to file sworn statements of the amount expended by them or in their behalf for election purposes; and severe penalties are provided against bribery or intimidation of voters.

560. Casting and counting the Ballots. Throughout the Union, voting is by ballot, the polls being open during daylight, commonly from six A. M. to six P. M. All the **Australlian** States except five have adopted the Australian bal- **system** lot in modified form.² This system provides for the exclusive use of an official ballot upon which the names of all candidates are printed (generally in parallel columns underneath the party names and emblems).³ The voter receives one of these ballots from the election officials, and prepares it while alone in a little booth. He may vote a straight ticket by placing a cross-mark in the circle at the head of the party column, or a split or mixed ticket by placing a cross-mark opposite the name of each candidate for whom he wishes to vote. He then folds his ballot, and hands it to an election officer, who, in the presence of the other officers and of the voter, deposits it in the ballot-box.

As soon as the polls close, the ballots are counted, and the results certified to the proper county or city **Election** officers, who canvass the returns for the entire **returns** county or city, and issue certificates of election to the suc-

¹ In order to prevent him from selling his vote, and then distinguishing his ballot by tearing or marking it in such a way that the purchasers may know that he has kept his agreement.

² In ten commonwealths voting machines are used to a limited extent.

³ Another form known as the "Massachusetts" ballot is used in eleven States. This omits the party emblem entirely, the names of the candidates being arranged in alphabetical order under the title of each office, followed by the name of the party; and the voter must have sufficient intelligence to read the ballot and select the candidates for whom he wishes to vote. Other States have a different plan, and print a separate ballot for each party or group of voters that has nominated candidates.

cessful candidates. When State officers, presidential electors, or congressmen are voted for, the county authorities certify the result in their respective counties to State officers, who canvass the returns and issue the election certificates.

In most commonwealths a plurality only is necessary to an election; that is, a number of votes in excess of those received by any other candidate. A few New England States require a majority of all votes cast, and where there are more than two candidates, this sometimes necessitates a second election. For the adoption of constitutional amendments a majority of all votes cast at the election is generally required.

GENERAL REFERENCES

- Ashley, R. L., *The American Federal State* (1903), ch. xxii.
 Beard, C. A., *American Government and Politics* (1910), chs. vii, xxx.
 ——— *Readings in American Government and Politics* (1910), ch. vii.
 Bishop, J. B., *Our Political Drama: Conventions, Campaigns, Candidates* (1904).
 Bryce, James, *The American Commonwealth* (1907), II, chs. LXVI, LXIX-LXXIII.
 Cleveland, F. A., *The Growth of Democracy* (1898), ch. xii.
 Dallinger, F. W., *Nominations for Elective Office* (1897).
 Ford, H. J., *The Rise and Growth of American Politics* (1898), ch. xvi.
 Foster, R., *Commentaries on the Constitution of the United States* (1895), pars. 50-59.
 Fuller, Robert H., *Government by the People* (1908).
 Giddings, F. H., *Democracy and Empire* (1900), ch. xv.
 Goodnow, F. J., *City Government in the United States* (1904), ch. vi.
 Hart, A. B., *Actual Government* (1903), ch. iv.
 Merriam, C. E., *Primary Elections* (1908).
 Meyer, E. C., *Nominating Systems: Direct Primaries vs. Conventions in the United States* (1902).
 Reinsch, P. S., *Readings on the American Federal Government* (1909), ch. xvi.
 Schouler, James, *Constitutional Studies* (1904), pp. 231-249.
 Stanwood, Edward, *A History of the Presidency* (1898).
 Woodburn, J. A., *Political Parties and Party Problems in the United States* (1909), chs. x, xii, xx.

QUESTIONS AND EXERCISES

1. Distinguish between an inhabitant, a citizen, and a voter.
2. Are all citizens voters? In your State must a voter be a citizen?
3. What are the qualifications for voters in your State? Are these determined by your State constitution or by statute? What classes of individuals are expressly disqualified, and why?
4. What provisions of the federal constitution control the right of your State to determine the qualifications for voters?
5. Examine the report of the last census and ascertain the total number of citizens and the number of voters in your city or county. How many votes are usually cast in your city and county elections?
6. In the last State election how many votes were cast in your county for governor? What number of voters failed to exercise the right of suffrage? Should there be a property qualification for voters? An educational qualification?
7. Give the chief arguments for and against woman's suffrage.
8. On an outline map of your State, mark with different colors the several election districts in which you live: the precinct, ward, county, State representative and senatorial districts, and the congressional district.
9. Is registration required in your State? In all communities, or in cities of a certain size? What are the advantages of registration?
10. Is the system of registration annual as in New York, or permanent as in Massachusetts? Describe the process of registration in your community.
11. How is your local board of registration chosen? Of how many members composed?
12. Give the time of holding local, State, and national elections in your commonwealth. What are the reasons for holding these at the same or different times?
13. State the advantages and disadvantages of frequent elections.
14. Which form of the Australian ballot is used in your State?
15. Where is the polling-place in your precinct? How many votes were cast there at the last election? During what hours were the polls open?
16. What body canvasses the vote in your city or county?
17. In your State what candidates are nominated by conventions? By direct primaries? By petition? What are the advantages of each method?
18. What are the functions of the local party primary in your community? What are the tests of party allegiance?
19. Why is it important that party primaries be regulated by law?
20. Describe the last State convention held by one of the political parties in your State, and compare its procedure with that described in Section 546.
21. Prepare a report upon the national convention of each of the great political parties. (Reinsch, P. S., *Readings*, pp. 826-845.)
22. Suggested readings on political rights and duties: Kaye, P. L., *Readings*, pp. 111-128.

APPENDIX A

THE CONSTITUTION OF THE UNITED STATES

PREAMBLE

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I. LEGISLATIVE DEPARTMENT

Section I. Congress in General

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II. House of Representatives

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled

to choose three, *Massachusetts* eight, *Rhode Island and Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

Section III. Senate

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section IV. Both Houses

1. The times, places, and manner of holding elections for Sena-

tors and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section V. The Houses Separately

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section VI. Privileges and Disabilities of Members

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section VII. Mode of Passing Laws

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section VIII. Powers granted to Congress

The Congress shall have power:

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Section IX. Powers denied to the United States

1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section X. Powers denied to the States

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of the Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II. EXECUTIVE DEPARTMENT

Section I. President and Vice-President

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [The electors shall meet in their respective States and vote by

ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.] ¹

4. The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

¹ This clause of the constitution has been superseded by the twelfth amendment.

8. Before he enter on the execution of his office he shall take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the constitution of the United States.”

Section II. Powers of the President

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section III. Duties of the President

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section IV. Impeachment

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and con-

viction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III. JUDICIAL DEPARTMENT

Section I. United States Courts

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section II. Jurisdiction of the United States Courts

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.¹

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section III. Treason

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

¹ This clause has been amended. See Amendments, Article XI.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV. — THE STATES AND THE FEDERAL GOVERNMENT

Section I. State Records

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section II. Privileges of Citizens, etc.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.¹

Section III. New States and Territories

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

Section IV. Guarantees to the States

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them

¹ This clause has been nullified by Amendment XIII, which abolishes slavery.

against invasion, and on application of the legislature, or of the Executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V. POWER OF AMENDMENT

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI. PUBLIC DEBT, SUPREMACY OF THE CONSTITUTION, OATH OF OFFICE, RELIGIOUS TEST

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution as under the Confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII. RATIFICATION OF THE CONSTITUTION

The ratification of the conventions of nine States shall be sufficient for the establishment of this constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, and of

the Independence of the United States of America the twelfth.
In witness whereof, we have hereunto subscribed our names.

George Washington, President, and Deputy from VIRGINIA.

NEW HAMPSHIRE — John Langdon, Nicholas Gilman.

MASSACHUSETTS — Nathaniel Gorham, Rufus King.

CONNECTICUT — William Samuel Johnson, Roger Sherman.

NEW YORK — Alexander Hamilton.

NEW JERSEY — William Livingston, David Brearley, William Paterson, Jonathan Dayton.

PENNSYLVANIA — Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

DELAWARE — George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom.

MARYLAND — James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll.

VIRGINIA — John Blair, James Madison, Jr.

NORTH CAROLINA — William Blount, Richard Dobbs Spaight, Hugh Williamson.

SOUTH CAROLINA — John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

GEORGIA — William Few, Abraham Baldwin.

Attest: William Jackson, *Secretary*.

AMENDMENTS ¹

ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

¹ The first ten amendments were proposed by Congress, September 25, 1789, and declared in force December 15, 1791.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X

The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

ARTICLE XI ¹

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII ²

1. The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a

¹ Proposed by Congress March 5, 1794, and declared in force January 8, 1798.

² Proposed by Congress December 12, 1803, and declared in force September 25, 1804.

majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII ¹

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV ²

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support

¹ Proposed by Congress February 1, 1865, and declared in force December 18, 1865.

² Proposed by Congress June 16, 1866, and declared in force July 28, 1868.

the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV ¹

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

¹ Proposed by Congress February 26, 1869, and declared in force March 30, 1870.

APPENDIX B

AREA, POPULATION, AND ELECTORAL VOTES
OF THE STATES, 1910

STATE	Became Member of Union	Area Square Miles	POPULATION		Electoral Vote (Ap- portionment of 1902)
			1900	1910	
Alabama	1819	51,993	1,828,697	2,138,093	11
Arizona		113,956	122,931	204,354	
Arkansas	1836	53,335	1,311,564	1,574,449	9
California	1850	158,297	1,485,053	2,377,549	10
Colorado	1875	103,948	539,700	799,024	5
Connecticut	1788	4,965	908,420	1,114,756	7
Delaware	1787	2,370	184,735	202,322	3
Florida	1845	58,666	528,542	752,619	5
Georgia	1788	59,265	2,216,331	2,609,121	13
Idaho	1890	84,313	161,772	325,594	3
Illinois	1818	56,665	4,821,550	5,638,591	27
Indiana	1816	36,354	2,516,462	2,700,876	15
Iowa	1846	56,147	2,231,853	2,224,771	13
Kansas	1861	82,158	1,470,495	1,690,949	10
Kentucky	1791	40,598	2,147,174	2,290,905	13
Louisiana	1812	48,506	1,381,625	1,656,388	9
Maine	1820	33,040	694,466	742,371	6
Maryland	1788	12,327	1,188,044	1,295,346	8
Massachusetts	1788	8,266	2,805,346	3,366,416	16
Michigan	1837	57,980	2,420,982	2,810,173	14
Minnesota	1858	84,682	1,751,394	2,075,708	11
Mississippi	1817	46,865	1,551,270	1,797,114	10
Missouri	1821	69,420	3,106,665	3,293,335	18
Montana	1889	146,572	243,329	376,053	3
Nebraska	1867	77,520	1,066,300	1,192,214	8
Nevada	1864	110,690	42,335	81,875	3
New Hampshire	1788	9,341	411,588	430,572	4
New Jersey	1787	8,224	1,883,669	2,537,167	12
New Mexico		122,634	195,310	327,301	
New York	1788	49,204	7,268,894	9,113,614	39
North Carolina	1789	52,426	1,893,810	2,206,287	12
North Dakota	1889	70,837	319,146	577,056	4
Ohio	1802	41,040	4,157,545	4,767,121	23
Oklahoma	1907	70,057	790,391	1,657,155	7
Oregon	1859	96,699	413,536	672,765	4
Pennsylvania	1787	45,126	6,302,115	7,665,111	34
Rhode Island	1790	1,248	428,556	542,610	4
South Carolina	1788	30,989	1,340,316	1,515,400	9
South Dakota	1889	77,615	401,570	583,888	4
Tennessee	1796	42,022	2,020,616	2,184,789	12
Texas	1845	265,896	3,048,710	3,896,542	18
Utah	1894	84,990	276,749	373,351	3
Vermont	1791	9,564	343,641	355,956	4
Virginia	1788	42,627	1,854,184	2,061,612	12
Washington	1889	69,127	518,103	1,141,990	5
West Virginia	1863	24,170	958,800	1,221,119	7
Wisconsin	1848	56,066	2,069,042	2,335,860	13
Wyoming	1890	97,914	92,531	145,965	3
Total		3,026,719	75,715,857	91,644,197	483

APPENDIX C

AREA AND POPULATION OF TERRITORIES
AND INSULAR POSSESSIONS

TERRITORY	Date of Acquisition	Date of Organization	Area Square Miles	Population, 1910
Alaska	1867	1868	590,884	64,356
District of Columbia . .		1791	70	331,069
Guam	1899		210	9,000
Hawaii	1898	1900	6,449	191,909
Panama Canal Zone . .	1904		474	
Philippine Islands . . .	1899	1902	115,026	7,633,426
Porto Rico	1899	1900	3,435	1,118,012
Tutuila Group, Samoa . .	1900		77	3,750
Total			716,625	9,351,522

APPENDIX D

ILLUSTRATIVE MATERIAL FOR THE STUDY OF
GOVERNMENT

PART I. LOCAL GOVERNMENTS. CHAPTERS I-VI

1. A map of the pupil's State, showing the counties.
2. An enlarged map of the pupil's county, showing its subdivisions.
3. Reports of county and town or township officers.
4. Ballots used at county elections.
5. A collection of legal notices from the local papers.
6. Copies of the more common legal blanks (deeds, mortgages, etc.).
7. Town-warrants, tax-bills, and other town documents.
8. The State constitution and revised statutes.
9. The manual of the State legislature.
10. The city charter and ordinances.
11. A copy of the city manual for each pupil.
12. A map of the city showing ward lines and election precincts.
13. The city council calendar.
14. Copies of measures introduced into the council, and of ordinances published in the daily papers.
15. Reports of the several municipal departments and officers.
16. A declaration of taxable property and a tax-bill.
17. Copies of tally-sheets used at elections.
18. Copies of nomination petitions, if used.
19. Copies of the ballots used at municipal, State, and national elections.
20. A copy of the jury list.
21. A set of the forms used in civil and criminal actions.

PART II. STATE GOVERNMENTS. CHAPTERS VII-XVII

1. Copies of the constitution and revised statutes of the pupil's own State.
2. A collection of the constitutions of all the States. The most recent and complete is F. N. Thorpe's *The Federal and State Constitutions, Colonial Charters, and other Organic Laws* (1909).
3. A good text-book on the government of the pupil's own State, such as the Handbooks of American Government, edited by L. B. Evans.
4. The manual of the State legislature.
5. A volume of the laws made during a legislative session.
6. A volume of the reports of the Supreme Court.
7. A map of the pupil's State, showing the representative and senatorial election districts.
8. Copies of the ballots used at State and national elections.
9. Copies of bills which have been introduced into the legislature.
10. Copies of the calendar and the journal of each house of the legislature.

PART III. THE NATIONAL GOVERNMENT.

CHAPTERS XVIII-XXXVII

1. A large political map of the United States, showing territorial acquisitions.
2. A good physiographic map of the United States.
3. Abstract of the Twelfth Census, and the statistical atlas of the Twelfth Census (same for the Thirteenth Census, as soon as published).
4. The Statistical Abstract of the United States.
5. The United States Revised Statutes.
6. Copies of the House Manual and the Senate Manual.
7. Latest copy of the Congressional Directory.
8. The Congressional Record.
9. Reports of the federal departments and bureaus, especially those of the Civil Service Commission, the Interstate Commerce Commission, the Commissioner of Education, the Commissioner of Immigration, the Monthly Summary of Commerce and Finance, the Year-Book of the Department of Agriculture, the Consular Reports, and the Labor Bulletins.
10. The Executive Register, published by the Government Printing Office.
11. Thorpe's *The Federal and State Constitutions*. This contains also the early charters and plans of Union: — colonial charters, New England Articles of Confederation, Albany Plan of Union, Declaration of Independence, Articles of Confederation.
12. Through the Superintendent of Documents, Washington, D. C., the federal government distributes at a nominal price thousands of publications of the greatest value to students of government. Price lists of these publications should be obtained from the Superintendent of Documents, and the pupils should be fully informed concerning the material thus available. The following price lists and leaflets will be found of especial value to the student of government: —

APPENDIX

Price Lists

- | | |
|--|---------------------------------------|
| 10. Laws of United States. | 33. Labor question. |
| 18. Engineering: Mechanics. | 34. Library of Congress publications. |
| 19. Army and Navy. | 36. Periodicals. |
| 20. Lands. | 37. Tariff. |
| 24. Indians. | 43. Forest Service. |
| 25. Transportation. | 44. Plant Industry Bureau. |
| 26. Sociology. | 45. Public Roads Office. |
| 28. Finance. | 46. Soils Bureau. |
| 29. Economics. | 47. Statistics Bureau, Agric. Dept. |
| 31. Education. | 48. Weather Bureau. |
| 32. Noncontiguous territory
and Cuba. | 49. Proceedings of Congress. |
| | 50. American History. |

Leaflets

- | | |
|-------------------------|----------------------------------|
| 1. International Law. | 23. Merchant marine. |
| 8. Government maps. | 33. Interstate Commerce reports. |
| 10. Public documents. | 35. Postal savings-banks. |
| 17. Army history. | 36. Historical bibliography. |
| 18. Executive Register. | 38. Patriotic documents. |

APPENDIX E

SELECTED REFERENCES ON AMERICAN
GOVERNMENT*Bibliographies and Outlines for the Study of Government*

- Brookings, W. D., and Ringwalt, R. C., *Briefs for Debate on Current Political, Economic, and Social Topics* (1896).
- Channing, E., and Hart, A. B., *Guide to the Study of American History* (1896).
- Hart, A. B., *Handbook of the History, Diplomacy, and Government of the United States* (1908).
- *Source Book of American History* (1899).
- Municipal Affairs*, vol. v, no. 1 (1901), contains a classified list of books and articles on local government.
- New England History Teachers' Association, *Outline for the Study of American Civil Government* (1910).
- New York State Education Department, *Syllabus for Secondary Schools* (1910). (Outline for the study of Civics, pp. 135-154.)

Sources in American Government

- Beard, C. A., *Readings in American Government and Politics* (1910).
- Hart, A. B., *American History told by Contemporaries* (1906, 4 vols.).
- Kaye, P. L., *Readings in Civil Government* (1910).
- Macdonald, William, *Select Charters and other Documents illustrative of American History, 1606-1775* (1904).
- *Select Documents illustrative of the History of the United States, 1776-1861* (1898).

Macdonald, William, *Select Statutes and other Documents illustrative of American History, 1861-1898* (1903).

Reinsch, P. S., *Readings on American Federal Government* (1909).

Richardson, J. D., *A Compilation of the Messages and Papers of the Presidents, 1789-1897* (1896-1899, 10 vols.).

Thayer, J. B., *Cases on Constitutional Law; with Notes* (1895, 2 vols.).

Thorpe, F. N., *The Federal and State Constitutions* (1909, 7 vols.).

Constitutional and Governmental Histories

Channing, Edward, *A Student's History of the United States* (1905).

Hart, A. B., ed., *Epochs of American History, including Thwaites, R. G., The Colonies; Hart, A. B., Formation of the Union; Wilson, W., Division and Reunion* (1897-1898, 3 vols.).

——— *The American Nation; A History* (1907, 27 vols.).

Landon, J. S., *The Constitutional History and Government of the United States* (1905).

McMaster, J. B., *History of the People of the United States from the Revolution to the Civil War* (1901).

Schouler, James, *History of the United States of America under the Constitution* (1906, 6 vols.).

Sparks, E. E., *The United States of America* (1904, 2 vols.).

Thorpe, F. N., *Constitutional History of the United States, 1765-1895* (1901, 3 vols.).

Constitutional Treatises on American Government

Black, H. C., *Handbook of American Constitutional Law* (1897).

Cooley, Thomas M., *Principles of Constitutional Law* (1898).

Kent, James, *Commentaries on American Law* (14th ed., 1896, 4 vols.).

McClain, E., *Constitutional Law in the United States* (1905).

Story, Joseph, *Commentaries on the Constitution of the United States* (5th ed., 1905, 2 vols.).

Tucker, John R., *The Constitution of the United States* (1899, 2 vols.).

General Works on American Government

Ashley, R. L., *The American Federal State* (1903).

Beard, C. A., *American Government and Politics* (1910).

Bryce, James, *The American Commonwealth* (1907, 2 vols.).

Goodnow, F. J., *Comparative Administrative Law* (Student's Abridged ed., 1903).

Hart, A. B., *Actual Government* (1903).

Lalor, John J., *Cyclopedia of Political Science* (1899).

Schouler, James, *Constitutional Studies, State and Federal* (1904).

Willoughby, W. W., *The American Constitutional System* (1904).

Wilson, Woodrow, *The State* (1906).

Rural Local Government

Fairlie, J. A., *Local Government in Counties, Towns, and Villages* (1906).

Howard, G. E., *Introduction to the Local Constitutional History of the United States* (1889).

Municipal Government

Goodnow, Frank J., *City Government in the United States* (1904).

Fairlie, J. A., *Municipal Administration* (1901).

Rowe, L. S., *Problems of City Government* (1908).

Wilcox, Delos F., *The American City; A Problem in Democracy* (1904).
 Zueblin, Charles, *American Municipal Progress* (1903).

State Government

Baldwin, S. E., *The American Judiciary* (1905).
 Bliss, W. D. P., and others, eds., *Cyclopedia of Social Reform* (1908).
 Blackman, F. W., *Economics for High Schools* (1907).
 Butler, Wilson R., *Government in the New England States* (1905).
 Cooley, Thomas M., *Constitutional Limitations* (1890).
 Dealey, J. Q., *Our State Constitutions* (1907).
 Ely, R. T., *Taxation in American States and Cities* (1888).
 Finley, J. H., and Sanderson, J. F., *The American Executive and Executive Methods* (1908).
 Plehn, Carl, *Introduction to Public Finance* (1897).
 Reinsch, P. S., *American Legislatures and Legislative Methods* (1907).
 State Governments, Handbooks of, edited by Evans, L. B.: Government of New York, Morey, W. C. (1902); Government of Ohio, Siebert, W. H. (1904); Government of Illinois, Greene, E. B. (1904); Government of Maine, Macdonald, Wm. (1902).
 Wright, Carroll D., *Outline of Practical Sociology* (1899).

The Federal Government

Brewer, David J., *The United States Supreme Court* (1903).
 Dewey, D. R., *Financial History of the United States* (1903).
 Fairlie, J. A., *The National Administration of the United States of America* (1905).
 Follett, M. P., *The Speaker of the House of Representatives* (1904).
 Hamilton, Madison, and Jay, *The Federalist* (Lodge, H. C., ed., 1904).
 Harrison, B., *This Country of Ours* (1903).
 McConachie, L. G., *Congressional Committees* (1898).
 Rhodes, J. F., *The Presidential Office* (1903).
 Tiedemann, C. G., *The Unwritten Constitution of the United States* (1890).
 Various authors, *History-Making: The Story of a Great Nation* (1910).
 Willoughby, W. W., *Territories and Dependeneies of the United States* (1905).
 Wilson, Woodrow, *Constitutional Government in the United States* (1908).
 Woodburn, J. A., *The American Republic and its Government* (1903).

Political Parties and Elections

Dallinger, F. W., *Nominations for Elective Office in the United States* (1897).
 Ford, H. J., *The Rise and Growth of American Politics* (1898).
 Fuller, R. H., *Government by the People* (1908).
 Goodnow, F. J., *Politics and Administration* (1900).
 Johnston, Alexander, *History of American Politics* (1902).
 Macy, Jesse, *Party Organization and Machinery* (1904).
 Merriam, C. E., *Primary Elections* (1908).
 Stanwood, E., *History of the Presidency* (1904).
 Woodburn, J. A., *Political Parties and Party Problems in the United States* (1909).

INDEX

(References are to pages of text.)

- Adjournment of Congress, 267.
- Adjutant-General, State, 112.
- Administrative departments, city, 56-57; State, 109-112; national, 312-324.
- Administrative law, 100.
- Administrators, appointment of, 120.
- Admission of States, 91, 420-421.
- Agriculture, State department of, 112, 160; federal department of, 322-323.
- Alabama, 27, 136, 179, 251, 262, 466; the Alabama Claims, 399.
- Alaska, 230, 259, 408; government of, 412.
- Albany plan of union, 208.
- Alexandria conference, 215.
- Alien and Sedition Laws, 447.
- Aliens, 435-436.
- Almshouses, 153.
- Ambassadors, appointment and reception of, 304-305, 402-403; classes, term, salary, 402; duties and privileges, 403.
- Amendment process, under State constitutions, 91-93; under federal constitution, 226-227; analysis of federal amendments, 227-228.
- American Association, the, 209.
- American Republics, Bureau of, 324.
- Annapolis Academy, the, 184, 319, 431.
- Annapolis Convention, 215.
- Annexations, territorial, 398.
- Anti-Federalists, 446-447.
- Anti-Masonic party, 449.
- Anti-Trust Act of 1890, 392. *See* Trusts.
- Appeals, in civil cases, 124; in federal courts, 333; State courts of appeals, 119; federal circuit courts of appeals, 332.
- Appointment to office, municipal, 57; State, 107, 111-113; federal, 231, 300-305.
- Apportionment, for State legislatures, 95; for United States Representatives, 259-261.
- Appropriations, municipal, 31; State, 193-194; federal, 340-344.
- Arbitration, State boards of, 161; international, 401.
- Aristocracy, 4, 5.
- Aristotle, 1, 4, 8.
- Arizona, 259; territorial government of, 413-414.
- Arkansas, 251, 466.
- Army, United States, 426-428; foreign armies, 427.
- Arrest, warrant for, 142-143.
- Arson, 142.
- Articles of Confederation, 6, 409; analysis of, 210-213; contrast with federal constitution, 217, 327.
- Assemblies, colonial, 76, 83.
- Assessments, special, 191-192.
- Assessor, county, 26, 35; township, 31; city, 57.
- "Association," the American, 209.
- Attainder, bill of, 240, 242, 443-444.
- Attorney, 121; prosecuting (State), 26, 34, 111, 121; federal, 334.
- Attorney-General, State, 109-111, 121; federal, 317.
- Auditor, county, 26, 35; State, 109-110.
- Australian ballot, 469-471.
- Austria-Hungary, government of, 9.
- Bail, 143.
- Balances, checks and, 8-9, 89.
- Ballot, Australian, 469-471.
- Banking, State commissioner of, 112.
- Bankruptcy, 390, 437-438.
- Banks, State, 164, 368; national,

- 352, 369-370; United States, 352, 366-367.
- Belligerents, 396.
- Bicameral legislature, 95, 248.
- Bill of attainder, 240, 242, 443-444.
- Bill of credit, 240.
- Bill of Rights, State, 87; federal, 227.
- Bills, introduction of, in State legislature, 98; in Congress, 276.
- Bimetallism, 360-364.
- Boards, municipal, 43; county, 26, 32-33, 35, 167; State, 44, 112, 151.
- Bond issues, municipal, 52; State, 203; national, 353.
- Borough, English municipal, 39-40.
- Borrowing power: of municipal governments, 52; of State governments, 203-204; of the national government, 352-355.
- "Boss," party, 451-452.
- Boston, term of mayor in, 54.
- Bridges, construction of, 167.
- Budget, preparation of federal, 340-344.
- Burglary, 142.
- Business taxes, 200, 201.
- Cabinet, under parliamentary government, 9, 313; in United States, 232, 312-313.
- Calendar, legislative, 277.
- California, 35, 117, 120, 159, 161, 174, 175, 176, 181, 251, 262, 436, 466.
- Canals, 168.
- Candidates, for State office, 459; for local offices, 456-457; presidential candidates, 460, 463. *See* Conventions, and Primary.
- Capital punishment, 145.
- Capital, the national. *See* Washington, D. C.
- Capitation tax, 201.
- Caucus, nominations by, 455, 459; legislative caucus, 251-252.
- Census, bureau of, 324; apportionment after decennial census, 260.
- Certificates, gold and silver, 360, 366.
- Certiorari*, writs of, 119.
- Chairman. *See* Committees, party.
- "Challenges," in selection of jury, 123.
- Chancellor, English, 116.
- Chancery courts, 116.
- "Charge," of judge to jury, 123.
- Charges and prices, regulation of, 137.
- Charities, municipal, 66; administration of charities, 151; methods of poor relief, 153; dependent children, 153-154; medical charities, 154; vagrants, 154; charity organization societies, 155; care of defective classes, 155-156; cost of charities, 156.
- Charter colonies, 74-75.
- Charter, municipal, 40, 42; charter-making for cities, 45.
- Checks and balances, 8-9; 89.
- Chicago, 57.
- Child labor, 137, 161.
- Children, care of dependent, 153-154.
- Chinese, exclusion of, 386; naturalization of, forbidden, 436.
- Chisholm *v.* Georgia, 227.
- Circuit court of appeals, federal, 332.
- Circuit court, State, 118; federal, 331. *See* Judiciary.
- Citizenship, admission to, 435-436; privileges of, 437.
- City, definition of, 38; dual character of, 38; origin and development of, 38-41; history of, in Great Britain, 39-40; in United States, 41-46; charter of, 40-42; powers of, 42; relation to State governments, 38, 41-43; special legislation for, 43-45; franchises, 43, 69-70; commission government for, 45-46; improvements in government of, 47; council, *see* Council; mayor, 54-56; administrative officials of, 56-58; taxation in, 51; civil service, 57, 62; police system, 61-62; fire and health departments, 62-63; education in, 64-65; parks and playgrounds, 65-66; poor relief in, 66, 153-155; streets and sewers, 66-67; water supply, 68; lighting, 68; railways, 68-69; municipal ownership, 69-71; courts, 118; concentration of immigrants in, 388.
- Civil actions, procedure in, 122-124.
- Civil-Rights Cases, 337.
- Civil service, municipal, 57, 62;

- State, 112-113; federal, 303-304, 324.
- Civil War, 203; foreign affairs during, 398-399; pensions, 432-433.
- Claims, federal court of, 333.
- Clerk, county, 26, 35; township, 31; of State courts, 121, 122.
- Codification of the law, 117.
- Coinage, 358-359.
- Collectors, of local taxes, 25, 31, 34; of customs duties, 347; of internal revenue taxes, 349.
- Colleges and universities, 175-177.
- Colonies, establishment of, in North America, 74; charters of, 74; characteristics and classification of, 74-76; legislative and executive in, 76-77; judiciary in, 115-116; relations with Great Britain, to 1760, 77-78; mercantile system for, 80-81; dispute with Great Britain, 78-83; early attempts at union, 207-209. *See* Revolution, American.
- Colorado, 35, 108, 161, 181, 467.
- Columbia, District of, acquisition and government of, 414-415; courts of, 334.
- Comity, interstate, 246.
- Commander-in-chief, power of President as, 297-299.
- Commerce, under Articles of Confederation, 213, 215, 377; discussion of, in Constitutional Convention, 219; commercial powers under the constitution, 230, 377-378; navigation, 378-379; river and harbor improvements, 379-380; tariff duties, 346-347, 380, 385; immigration, 385-388; railway transportation, 390-391; Anti-Trust Act, 392; interstate commerce, 165, 388-392; State regulations affecting commerce, 163-169.
- Commerce and Labor, Department of, 324.
- Commission government, in cities, 45-46; municipal boards or commissions, 43; State commissions, 44, 112, 151.
- Commission, Philippine, 417.
- Commissioners, county, 26, 32, 35, 167.
- Committee system, in city councils, 53; in State legislatures, 97-98; committee of the whole, 98; committees in Congress, 232, 274-276; conference committees, 278.
- Committees of correspondence, 209.
- Committees, party, 450-451.
- Common law, 115-117. *See* Law.
- Common pleas, court of, 118.
- Compact theory, 2.
- Compromise type of local government, 22, 28-29.
- Compromises of constitution, 218-220.
- Comptroller, county, 57; State, 109, 110.
- Compulsory education, 181-182.
- Concurrent powers, 239.
- Confederate government, 6.
- Confederation, Articles of, 6, 327, 409; analysis of, 210-213; New England Confederation, 208.
- Conference committees, 278.
- Congresses, early: the Albany (1754), 208; Stamp Act Congress (1765), 208; First Continental (1774), 209; Second Continental (1775-1781), 209-210.
- Congress, United States, contrast with powers of State legislatures, 100; usages affecting, 232; sessions, 267; internal organization, 268; quorum, 269-270; president of Senate, 270; Speaker of House, 270-273; committees of Congress, 274-276; process of legislation, 276-278; relations with President, 278-279, 307-309; limitation on powers of, 279-280; express powers of, 280-281; implied powers of, 282; salary of members, 253; privileges of members, 253. *See* Senate, House of Representatives.
- Congressional Library, 324.
- Congressional Record, the, 269.
- Connecticut, 75, 86, 108, 120, 136, 159, 161, 178, 180, 181, 208, 223, 262, 409, 466, 467.
- Connecticut Compromise, 248-249.
- Conservation of natural resources, 159, 323.
- Constable, 30, 32, 35, 121, 122.

- Constitution, definition of, 3; written and unwritten, 3.
- Constitution, federal, demand for, 215-216; call of convention to frame, 216; the framing of, 217-222; compromises of, 218-220; sources of, 221; ratification of, 222-224; contrasted with Articles of Confederation, 217, 327; amendments of, 226-228; bill of rights, 227; interpretation of, 228-230, 282; development of, through usage, 230-233; limitations imposed by, on State governments, 101-102; duties of State governor under, 109.
- Constitutions, State, definition of, 86; formation of, 86, 91-92; parts of, 86-87; bills of rights, 87; development of, 90-91; amendment of, 91-93; authority of, 93, 117; interpretation of, 124-125; limitations upon legislative power, 102; individual rights under, 144.
- Constitutional Convention, the, 216-222, 446.
- Constitutionality of legislation, power of State courts to decide, 124-125; power of federal courts, 220, 336-337, 373-374.
- Consuls, appointment and tenure, 404; classes and salary, 404; duties and privileges, 405.
- Contested elections, in Congress, 268.
- Continental Congress, First, 209; Second, 209-210.
- Continental currency, 371.
- Contract labor, exclusion of, 385.
- Contracts, obligation of, 242.
- Convention of 1787, 216-222, 446.
- Conventions, party, 450; local, 456-457; State, 457-459; national, 460-463.
- Conventions, State constitutional, 230-233.
- Copyrights, 438-439.
- Coroner, 20, 26, 34.
- Corporate colonies, 74-75.
- Corporations, characteristics and development of, 162-163; State regulation of, 163-166; method of organization, 163; banks, 164; insurance companies, 164; railroads, 164-165; industrial combinations and trusts, 165-166; quasi-public corporations, 69-70, 137; taxation of, 200; federal control of, 390-393. *See* Banks, Railroads, Trusts.
- Council, city, decline of, 43; relation to mayor, 54-55; size of, 50; number of chambers, 50; election of members, 50; powers of, 51-53; qualifications, term and salary of members, 50; procedure in, 53-54.
- Council, in colonial cities, 41.
- Councils, executive, 76, 108, 254.
- Counterfeiting, 441-442.
- County, development of, in England, 17-18; in New England, 19; at the South, 19-20, 26; present county government in New England, 25-26; origin of, in Central States, 32-33; officers of, 26, 34-35; commissioners, 26, 32, 167; county court, 20; county lieutenant, 18, 20.
- Court, definition of, 122. *See* Judiciary.
- Cremators, 67.
- Crime, in early society, 140; definition of, 141; classification of, 141; causes of, 142; repression of, 142, 147-148; criminal procedure, 143; treatment of criminals, 147-148; federal power over crime, 441-444.
- Cuba, 409.
- Cumulative voting in Illinois, 96.
- Currency. *See* Finance, federal.
- Customs duties. *See* Tariff duties.
- Debate, in the House of Representatives, 277; in the Senate, 277.
- Debt, State and local, 202-204; national, 354-355.
- Declarations of Rights: (1765), 208; (1774), 209.
- Defective classes, care of, 155-156.
- Defendant, in civil cases, 122-123.
- Delaware, 21, 22, 75, 104, 120, 136, 168, 181, 215, 223, 250, 262, 409, 466.
- Delegates, territorial, 411, 413, 417, 418.
- Delinquent taxes, 198.
- Democracy, 4-5.
- Democratic party, 448, 449.

- Democratic-Republican party, 447.
 Departments, federal, 312-324; relations with Congress, 279; State departments, 110-112.
 Dependencies. *See* Territories.
 Deposition, testimony by, 127.
 Des Moines, commission government in, 46, 57.
 Dilatory motions, 273.
 Dingley Tariff Act, 382.
 Diplomatic representatives. *See* Ambassadors, Foreign affairs.
 Direct legislation, 93, 103.
 Direct nominations. *See* Nominations.
 Direct taxes, 195, 352.
 Disease, suppression of. *See* Health, boards of.
 Dispensary system, 137.
 Disputed election of 1876, the, 288-289.
 District attorneys, United States, 317, 334.
 Districts, congressional, 260-261.
 District court, 330-331. *See* Judiciary, federal.
 District of Columbia, acquisition and government of, 414-415; courts of, 334.
 Dollar, coinage of the, 360-363.
 Domain, public, 320-321, 409.
 Dred Scott Case, 337, 418.
 Duties, tariff, as a form of tax, 346-347; as commercial regulations, 380-385, 419; internal revenue duties, 315, 348-349.

 Economic functions of State governments, 158-169.
 Education, county superintendent of, 26; in cities, 53, 64-65; State supervision of, 111; State and local systems, 172-184; federal aid to, 183-184, 322; federal bureau of, 184.
 Educational test for immigrants, 388; for voters, 466.
 Eight-hour day, 161.
 Elastic clause, 229-230, 282.
 Elections, national, State, and local, 465-466, 467-472; separation of State and local, 47, 466; congressional, 263; presidential, 287-290; qualifications for voting, 466-467.
 Electoral Commission, 289.
 Electoral Count Bill, the, 289.
 Electors, presidential, 285-288; 464.
 Electric lighting in cities, 68.
 Eleventh amendment, 227.
 Emancipation proclamation, 298.
 Eminent domain, 52, 130, 137.
 Enabling act, 420.
 Engineer, State, 112.
 Envoys. *See* Ambassadors.
 Epidemics, prevention of. *See* Health, boards of.
 Equalization, boards of, 197.
 Equity, 115-117.
 Error, writs of, 119, 124.
 Evidence in civil cases, 123; in criminal cases, 145.
 Excise taxes, 347-349.
 Exclusive powers, 236, 239.
 Execution, writ of, 124.
 Executive Council, in Porto Rico, 416-417.
 Executive councils, 76, 108, 254.
 Executive departments, federal, 312-324. *See* the several departments.
 Executive sessions of Senate, 254-255.
 Executive, State, in early period, 88; increased powers of, 90; election and term of, 107; qualifications and salary, 107; powers of, 99, 107-109; judicial control over, 125-126; duties of, under federal constitution, 109; contrast with President's powers, 106.
 Expenditure. *See* Finance.
 Experiment Stations, agricultural, 323.
 Exports, duties on, forbidden, 241, 345, 380.
Ex post facto law, 280.
 Express powers of federal government, 236, 237, 280-281.
 Extradition, 246.

 Factory inspector, State, 112; factory legislation, 137, 160-162.
 Federal government, 6-7; federal law, supremacy of, 237-238; federal powers, 236-237. *See* National Government.
 Federalist, The, 223.
 Federalists, the, 446-447.
 Felonies, 141.

- "Filibustering," in Congress, 270, 273, 277.
- Finance, federal, powers of Congress over, 230; objects of expenditures, 341; control of expenditures, 342-344; criticisms of financial system, 343-344; revenues, 344-345; taxing power, 345-346; import duties, 346-347; excise taxes, 347-349; income taxes, 337, 349-351; direct taxes, 195, 352; borrowing power, 352-354; money, 358-366; banking system, 366-369; national debt, 354-355; government paper money, 371-374; independent treasury system, 370; pensions, 321; 432-433.
- Finance, local, powers of city council over, 51-52; taxing power of town meeting, 25-30; of county commissioners, 26; general property tax, 196-199; license and franchise taxes, 201-202.
- Finance, State, definition of, 187; expenditures, 187-189; revenues, 190-192; school revenues, 182-183; principles of taxation, 193; classification of taxes, 195; general property tax, 196-199; other taxes, 199-201; reforms in taxation, 202; State and local debts, 203-204.
- Fire department, in cities, 62-63.
- Fire-marshal, State, 112.
- Fish and game laws, 159-160.
- Florida, 120, 136, 176, 178, 179, 181, 251.
- Food and dairy commissioner, 112.
- Food products, inspection of, 63, 323.
- Foreign affairs, 305-307, 397-405.
- Forestry, scientific, 159, 322.
- Fourteenth amendment, 228.
- France, constitution and government of, 3, 4, 5, 6, 7, 9, 14, 61.
- Franchise, the elective. *See* Suffrage.
- Franchises, 43, 69-70; taxation of municipal, 43, 201-202.
- Frauds and oppression, prevention of, 138.
- Free coinage, 360-364.
- Free silver, 360-364.
- Free Soil party, 449.
- Free trade, policy of, 383-384. *See* Tariff duties.
- Full faith and credit clause, 246.
- Functions of government, 10-12. *See* Government.
- Fundamental Orders of Connecticut, 3.
- Gadsden Purchase, the, 230, 408.
- Galveston, commission government in, 45-46.
- Game laws, 159.
- Garbage disposal, 67.
- General property tax, 196-199.
- General staff, the, 317.
- Geneva Arbitration, the, 399.
- Geologist, State, 112.
- Georgia, 75, 95, 136, 178, 179, 181, 223, 248, 251, 466.
- Germany, constitution of, 3; form of government, 5, 6, 7, 61.
- Gerrymander, 261.
- Gold, coinage of, 360-365.
- Gorman-Wilson Tariff Act, 382.
- Government, definition of, 3; classification and characteristics of, 4-9; characteristics of American, 9-10; essential and optional functions of, 10-12; distribution of powers of, 7-8; checks and balances in, 8-9, 89; presidential, 9; parliamentary, 9; representative, 5, 9, 16; rural, 14-36; municipal, 38-71; State, 74-204; federal, 208-444. *See* States, Local government, National government.
- Governor. *See* Executive, State.
- Grand jury, 118, 143.
- Great Britain, constitution of, 3; form of government, 5, 6, 8, 9, 14; relations with North American colonies, 77-83.
- Greenback party, 449.
- Greenbacks, 365, 371-374.
- Gresham's Law, 360-361.
- Guam, 408, 415.
- Guardians, appointment of, 120.
- Habeas corpus*, 119, 143, 298.
- Hague Court, the, 401.
- Hamilton, Alexander, 215, 217.
- Harbors, improvement of, 379-380.
- Hawaii, 259, 408, 436; government of, 416.

- Health, county board of, 35; city department of, 63, 134; State boards of, 63, 134.
- High schools, 174-175.
- Highways, public, 166-167.
- Holy Alliance, the, 399.
- Home rule, municipal, 44-45.
- Homestead Act, 321.
- Hospitals, 155-156.
- House of Representatives, residence of members, 232; apportionment, 259-260; gerrymander, 261; elections to, 262-263; term and qualifications of members, 264; rights and privileges of members, 265; special powers of the House, 265, 289-290; Speaker of, 232, 270-274; debate in, 277; committees of, 232, 274-276; committee on rules, 274. *See* Congress, United States.
- House of Representatives (in State governments). *See* Legislature, State.
- Hundred, 16.
- Idaho, 104, 161, 181, 251, 467.
- Illinois, 29, 31, 32, 96, 108, 119, 161, 167, 168, 176, 178, 409, 467.
- Immigration, 385-388; State commissioner of, 112.
- Impeachment, State process of, 110; federal process of, 255-256.
- Imperialism, Great Britain's policy of, 78; issue of, in American politics, 449.
- Implied powers, of federal government, 229-230, 282, 446-447.
- Import duties, 241, 346-347.
- Inauguration, presidential, 291.
- Income tax, State, 201; federal, 337, 349-351.
- Incorporation, of cities, 40, 42; of business corporations, 163-164.
- Independence, Declaration of, 83-84.
- Independent voting, 452, 465.
- Indeterminate sentence, 146.
- Indian affairs, 321-322.
- Indiana, 29, 32, 108, 136, 151, 159, 161, 168, 176, 178, 181, 261, 409, 466.
- Indictment, 111, 143.
- Individual rights, protection of, 240-241.
- Indoor relief, 153-154.
- Inferior officers, of federal government, 302.
- Information, 111, 143.
- Inheritance tax, State, 200.
- Initiative, in State government, 93, 103.
- Injunction, writ of, 119, 126.
- Insane, care of, 156.
- Insular Cases, the, 419.
- Insular territories, *See* Territories.
- Insurance, regulation of, 164; State commissioner of, 112.
- Intention, declaration of, 435.
- Interior, Department of, 319-322.
- Internal improvements, 379-380.
- Internal revenue duties, 347-349; commissioner of, 315.
- International law, 396; offenses against, 442.
- International relations, 305-307, 397-405.
- Interpretation, constitutional. *See* Constitutionality of legislation.
- Interstate commerce. *See* Commerce, federal.
- Interstate Commerce Commission, 324, 391-392.
- Interstate relations, 245-246.
- Intervention, federal, 299-300.
- Intolerable Acts, the, 82-83.
- Inventions, patents for, 439-440.
- Iowa, 29, 30, 31, 151, 178, 181, 251, 467.
- Irrigation, 322.
- Isthmian Canal, the, 380, 409, 412.
- Italy, constitution and government of, 3, 6, 9, 14.
- Jails, 146.
- Japanese laborers, exclusion of, 386.
- Jefferson, Thomas, 84.
- Johnson, Andrew, 256, 309.
- Journals, legislative: State, 97, congressional, 269.
- Judges, county, 26, 34; police, in cities, 56, 57; State judges, choice and tenure of, 120; salary and qualifications of, 120-121; duties of, 123; federal, *see* Judiciary, federal.
- Judiciary, State, in early period, 89; development of, 115-116; inferior courts, 118; courts of general

- original jurisdiction, 118; courts of last resort, 119; special State courts, 119; probate courts, 119; selection, tenure, qualifications, and salary of judges, 120-121; subordinate officers of courts, 121; procedure in civil cases, 122-124; power to decide upon constitutionality of legislation, 124-125; control of executive officials, 125-126; relation to federal courts, 126; interstate judicial relations, 127; writs of injunction and *mandamus*, 126.
- Judiciary, federal, relation to State courts, 126; limitations of power by eleventh amendment, 227; establishment and organization of, 327-328; jurisdiction of, 328-330; appointment, term, and compensation of judges, 328; district courts, 331; circuit court, 331; circuit court of appeals, 332; Supreme Court, 332-333; special courts, 333-334; territorial courts, 413-418; interpretation of laws by, 335-337; power to decide constitutionality of legislation, 220, 336-337, 373-374.
- Jurisdiction, original and appellate, 118.
- Jury, petit, 123, 144-145; grand jury, 118, 143.
- Justice, Department of, 317-318.
- Justices of the peace in Southern colonies, 20, 32, 35; mayor's powers as, 56; justices' courts, 118.
- Juvenile courts, 148.
- Kansas, 29, 31, 136, 145, 151, 159, 178, 181, 251, 466, 467.
- Kentucky, 119, 181, 251, 467.
- Know Nothing party, 449.
- Labor, State legislation concerning, 137, 160-162; prison labor, 147; bureau of commerce and labor, 324.
- Lands, public, of State governments, 158-159; of federal government, 320-321, 409.
- Lands and forests, State commissioner of, 112.
- Larceny, 142.
- Law, common, 115-117; private, 100; administrative, 100; our system of, 117; enforcement of, 132-133; civil procedure, 122-124; criminal procedure, 143; martial law, 298, 432; international law, 396, 442.
- Lawlessness, suppression of, 132-133.
- Legal-Tender Decisions, 337, 373-374.
- Legislation, State, process of, 98-99; special, for cities, 43-45; governor's veto upon, 99; scope of, 100; limitations upon, 101-102; unconstitutional, 124-125, 336-337; federal, *see* Congress.
- Legislature, State: early period, 88; decline of, 90; proposal of constitutional amendments by, 92; two houses of, 95-96; election districts for, 95; minority representation in, 95; members, qualifications, term, and salary, 96; privileges of members, 97; sessions of, 96-97; process of legislation, 98-99; committees of, 97, 98; journal, 98; powers of, 100; limitations upon powers, 101-102; governor's veto, 99; relation to governor, 108.
- Legislature, municipal. *See* Council.
- Legislature, federal. *See* Congress.
- Liberal construction, 229-230, 282.
- Liberal party, 448, 449.
- Libraries, city, 65; State librarian, 112.
- License taxes, 201.
- Lieutenant-Governor, 97, 109, 110.
- Lighting, public, in cities, 68.
- Lincoln, Abraham, 230.
- Liquor traffic, regulation of, 136-137.
- Loans. *See* Borrowing power.
- Local government, 7; relation of, to State governments, 14; origin of, 14-22, 38-47; centralized and decentralized systems of, 14; dual character of, 4; classification of, 15; rural local governments, 14-22, 24-35; origin of, in New England, 18-19; at the South, 19-21; contrast between New England and Southern systems, 21; development of, in the Middle States, 22; present system of, in New

- England, 24-26; in the West, 35; township-county systems of, 27-35; functions of, 7, 24-35, 61-71.
 Local option, 136.
 Louisiana, 27, 117, 119, 120, 159, 161, 178, 179, 181, 251, 262, 466, 467.
 Louisiana Purchase, the, 230, 407.
 McCulloch *v.* Maryland, 337.
 McKinley Tariff Law, 382.
 Machine, the party, 451-452.
 Madison, James, 217, 222, 223.
 Mail matter. *See* Postal service.
 Maine, 104, 120, 136, 145, 159, 176, 178, 180, 181, 262, 263, 466.
Mandamus, 111, 119, 126.
 Manor, 16.
 Manual training, 175.
 Marbury *v.* Madison, 336.
 Mark, the German, 15.
 Marque and reprisal, letters of, 242, 425.
 Marshals, federal, 298, 334.
 Martial law, 298, 432.
 Maryland, 21, 22, 75, 108, 120, 159, 167, 168, 174, 179, 181, 210, 215, 223, 251, 285, 409.
 Massachusetts, 57, 62, 75, 83, 91, 95, 107, 113, 120, 136, 148, 151, 159, 161, 174, 178, 180, 181, 201, 209, 223, 262, 409, 466, 467.
 Mayor, in colonial cities, 41; in British cities, 41; in United States: election, term, and salary, 54; powers, 54-56; the "responsible" mayor, 56.
 Mercantile colonial system, 80-81.
 Message, mayor's, 55; governor's, 108; President's, 307-308.
 Metric system, 441.
 Merit system. *See* Civil Service.
 Mexican cessions, 408.
 Mexican War, 230, 398.
 Michigan, 29, 30, 31, 136, 145, 148, 159, 161, 168, 175, 176, 178, 181, 251, 409, 466, 467.
 Middle States, development of local government in, 22.
 Military Academy, United States, 316.
 Military functions, of federal government, 424-433; military officers, 427-428, 431; militia, 132-133, 297, 299, 429-430; navy, 430-431; pensions, 432-433; military sites, 415.
 Military powers, of sheriff, 34; of mayor, 56; of governor, 108; of President, 297-299.
 Militia, 132-133, 297, 299, 429.
 Milwaukee, 57.
 Ministers, foreign. *See* Ambassadors.
 Minnesota, 29, 30, 31, 151, 159, 161, 174, 176, 178, 180, 181, 467.
 Minority representation, 95.
 Mints, federal, 315-316.
 Misdemeanors, 141.
 Mississippi, 120, 136, 179, 181, 251, 262, 466.
 Mississippi River, improvement of, 380.
 Missouri, 29, 35, 104, 119, 161, 178, 181, 251, 466.
 Monarchy, 4, 5.
 Money. *See* Finance, federal; Mints, federal.
 Monometallism, 364-365.
 Monopolies, municipal, 69-71; State control of, 165-166; capitalistic, 166; federal control of, 390-393.
 Monroe Doctrine, the, 399-400.
 Montana, 104, 161, 181, 250, 467.
 Montesquieu, 8, 15, 211.
 Morals, public, protection of, 135.
 Morris, Gouverneur, 221.
 Mortgage tax, 199.
 Municipality. *See* City.
 Nation, definitions of, 3.
 National banks, 352, 369-370.
 National committees, of political parties, 450, 460, 462.
 National conventions, call, 460; procedure in, 461-463.
 National government, sphere of activity, 7; relation to States, 235-239; limitations on powers of, 240-242. *See* Congress, President, Judiciary, Government (federal), Executive departments, etc.
 National guard. *See* Militia.
 Naturalization, 435-437.
 Natural resources, preservation of, 159, 323.
 Naval Academy, United States, 184, 319, 431.
 Naval stations and yards, 319, 430.

- Navigation, 168, 378-379; Acts of Navigation and Trade, 81.
- Navy, Department of, 319, 430-431.
- Nebraska, 29, 31, 108, 176, 178, 181, 250, 251, 466, 467.
- Neutrals, rights of, 397-399.
- Nevada, 35, 176, 181, 251, 286.
- New England Confederation, 208.
- New England, town government of. *See* Towns.
- New Hampshire, 75, 86, 91, 120, 136, 153, 159, 178, 180, 181, 223, 262, 466, 467.
- New Jersey, 22, 75, 86, 107, 108, 119, 120, 159, 161, 168, 178, 180, 181, 201, 215, 223, 251, 409, 467.
- New Jersey plan, in Constitutional Convention, 217, 220.
- New Mexico, 259, 436; territorial government of, 413-414.
- New Orleans, 57.
- New York, 22, 29, 30, 31, 57, 62, 75, 108, 113, 119, 120, 136, 151, 158, 159, 161, 168, 178, 180, 181, 201, 210, 213, 215, 222, 223, 262, 286, 409, 467.
- Nominations, methods of, 455; local, 455-456; State, 457-459, 464-465; presidential, 460-463; direct, 452, 464-465; by petition, 465.
- North Carolina, 27, 75, 99, 108, 136, 159, 178, 179, 181, 201, 223, 262, 466.
- North Dakota, 29, 30, 31, 117, 136, 159, 178, 181, 251, 467.
- North German Confederation, 6.
- Northwest Territory, history of, 409-411.
- Notes, United States, 360, 371-374; treasury notes, 360, 362, 371; national bank notes, 360, 369; State bank notes, 368-369.
- Oath of office, presidential, 291.
- Officers, State: elective, 106-111; appointive, 111-113; federal, appointive, 231, 300-305.
- Ohio, 29, 30, 31, 51, 57, 62, 148, 151, 161, 168, 176, 178, 181, 183, 409, 467.
- Oklahoma, 104, 136, 180, 201, 251, 260.
- Order, preservation of, 132-133.
- Ordinance of 1784, 410; Ordinance of 1785, 28; Ordinance of 1787, 410-411.
- Ordinances, municipal, 53-54.
- Oregon, 35, 103, 159, 181, 250, 251, 263, 403, 466, 467.
- Outdoor relief, 153.
- Overseers of highways, 32, 167.
- Overseers of the poor, 31.
- Panama Canal, 380, 409, 412.
- Paper money. *See* Notes.
- Pardons, governor's power over, 108; President's power over, 309.
- Parish, in England and New England, 16; in Southern colonies, 21.
- Parks, city, 65.
- Parliamentary government, 9.
- Parties, political, functions of, 445-446; origin of, 446; history of, 446-449; organization of, 450-452; party issues, 446-449; party platforms, 458, 462. *See* Conventions, party.
- Party system, influence of, upon government, 233; upon election of Senators, 251-252; upon election of President, 290-291.
- Patents, 321, 439-440.
- Patriarchal theory, 1.
- Patronage, federal, 303-304.
- Paving, in cities, 67.
- Payne-Aldrich Tariff Law, 383.
- Peace and order, maintenance of, 132-133.
- Penitentiaries, 146.
- Pennsylvania, 75, 95, 108, 119, 120, 126, 146, 158, 159, 168, 178, 180, 181, 201, 215, 223, 248.
- Pensions, military, 321, 432-433.
- People's party, 449.
- Personal property taxes, 196-199, 202.
- Petition, nomination by, 465; right of petition, 240.
- Philippines, 259, 408, 436; government of, 417-418.
- Piracy, 442.
- Plaintiff, in civil cases, 122-123.
- Platform, party. *See* Parties, political.
- Playgrounds, municipal, 65, 66.
- Pleadings, 122.
- "Pocket-veto," by the governor, 99; by the President, 309.

- Police administration in cities, 61-62, 118.
- Police power, of city council, 51; of State governments, 129-138; definition of, 129; characteristics of, 130-131; of federal government, 131.
- Politics. *See* Parties.
- Poll tax, 201.
- Polygamy, 420.
- Pools, 165, 391-392.
- Poor, overseers of, 31; poor relief in cities, 53, 66, 153.
- Popular election of Senators, 251.
- Porto Rico, 259, 408, 436; government of, 416-417.
- Posse comitatus*, 132.
- Postal savings banks, 319.
- Post Office Department, 318-319; postal system, 389.
- Poverty, causes of, 152-153.
- Powers, division of, between federal and State governments, 7, 235-236; between State and local governments, 7; legislative, executive, and judicial, 8, 89.
- President, origin of office, 22, 285; inauguration, 224; political usages affecting, 231-232, 290-291; relations of, to Congress, 278-279; election of, 285-291; term, salary, and qualifications of, 290-292; military powers of, 297-299; diplomatic powers of, 304-307; legislative powers of, 307-309; judicial powers of, 309-310; veto power of, 278, 308-309; powers of appointment and removal, 300-304; nomination of candidates for, 460-463; succession to Presidency, 293; electors, presidential, 285-288, 290, 464.
- President *pro tempore* of Senate, 270.
- Presidential government, 9.
- Press, freedom of, 240.
- Previous question, in House of Representatives, 277.
- Primary, party, 455-456.
- Printing, State superintendent of, 112; federal printing-office, 324.
- Prisons and prison methods, 146-147.
- Private law, 100. *See* Law.
- Privateering, 425.
- Private rights, under federal constitution, 240-241.
- Privileges and immunities of citizens, 245.
- Privileges, of States in the Union, 243.
- Privy Council, British, 115.
- Prize courts, 425-426.
- Probate courts, 119.
- Probation officers, 148.
- Procedure, civil, 122-124; criminal, 143.
- Procedurc, in city councils, 53-54; in State legislatures, 96-99; in Congress, 276-279.
- Proclamations, presidential, 298, 307.
- Progressive taxation, 201.
- Prohibition laws, 131, 136; Prohibition party, 449.
- Prohibitions, upon State governments, 241-242; upon the federal government, 240-242.
- Property, protection of, 122.
- Proportional representation, 95.
- Proprietary colonies, 75.
- Prosecution of criminals. *See* Crime.
- Protection. *See* Tariff duties.
- Public acts, proving, 246.
- Public domain, 320-321, 409.
- Public works, State superintendent of, 112, 168.
- Punishment, theories of, 145-146.
- Puritans, 18, 20.
- Qualifications for suffrage, 466-467.
- Quarantine, 323. *See* Health, boards of.
- Quartermaster-General, 317.
- Quorum, in State legislature, 98; in Congress, 269-270; 273.
- Quo warranto*, 111, 119.
- Railroads, State regulation of, 164-165, 391; federal regulation of, 391-392.
- Railways, street, 68-69.
- Rates, railway. *See* Railroads.
- Real estate, tax on, 196-199.
- Recall, in cities, 46, 54.
- Reciprocity, treaties of, 382.
- Reclamation service, 322.
- Reconstruction, theories of, 421; reconstruction amendments, 228.

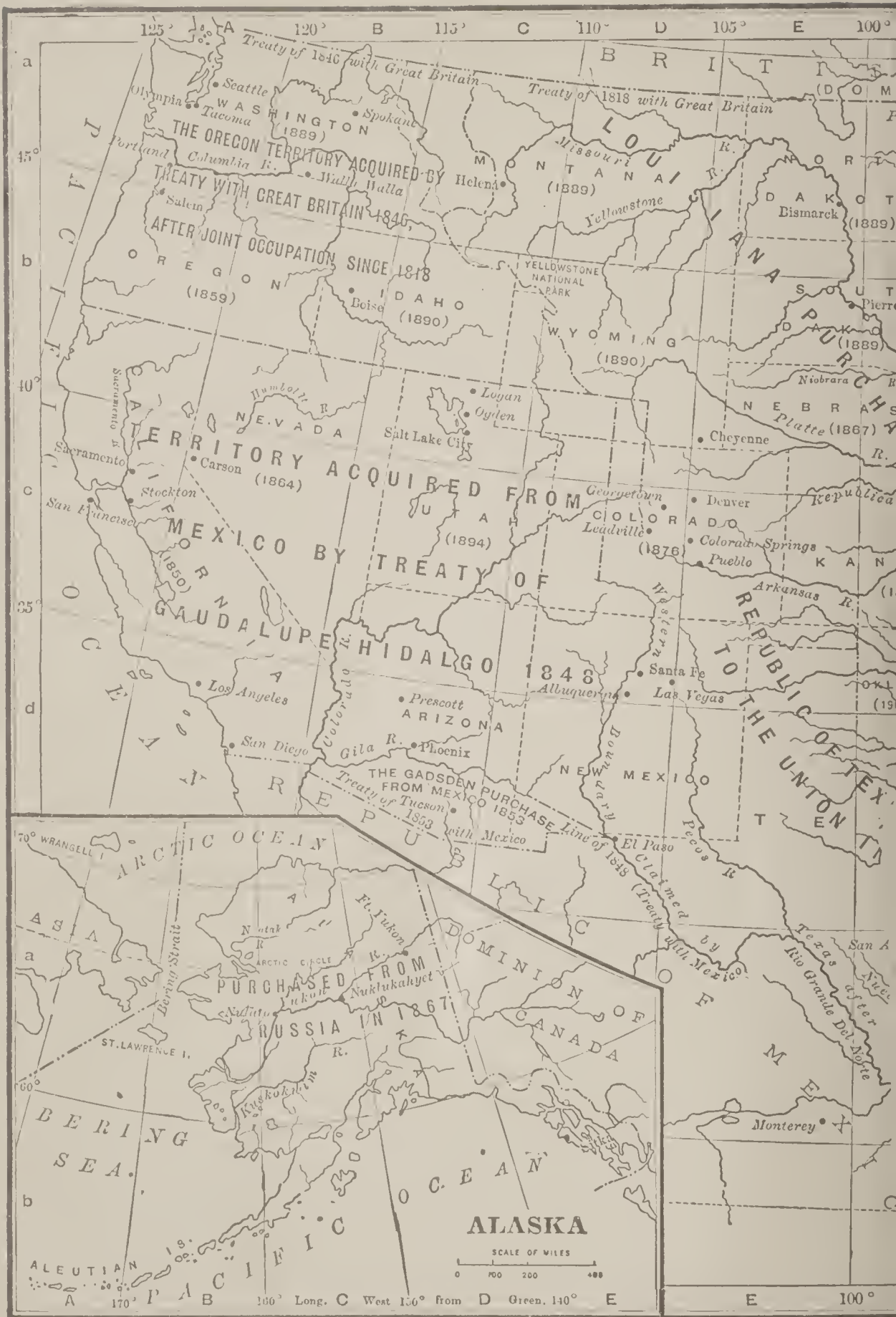
- Recorder, county, 26, 35.
 Recreation, in cities, 65-66.
 Referendum, State, 93, 103.
 Reformatories, 148.
 Registration, 467-468.
 Registry mail service, 318.
 Religion, freedom of, 240.
 Removal, President's power of, 302-303; governor's power of, 108.
 Representation, American and British theories contrasted, 79-80.
 Representative government, 4-5, 16.
 Representatives, House of. *See* House of Representatives.
 Reprieve, 310.
 Republican party, origin of, 448-449; policies of, 449.
 Requisition, governor's power to issue writs of, 109.
 Reservations, Indian, 322.
 Reserves, forest, 159, 322.
 Responsibility, official, of mayor, 45, 47, 55-56; of governor, 106-107; of President, 296-300, 309.
 Resumption of specie payments, 362, 372-373.
 Revenues. *See* Finance.
 Revolution, the American, 78-84, 209-210.
 Rhode Island, 75, 86, 107, 120, 136, 145, 178, 180, 181, 213, 223.
 "Riders" in legislation, 279.
 Rights, protection of individual, 121, 122, 144.
 River and harbor improvements, 379-380.
 Roads, overseers of, 26, 32; construction and maintenance of roads, 166-167.
 Robbery, 142, 442.
 Royal colonies, 74, 75.
 Rules, of House of Representatives, 270-274, 277; of Senate, 275; committee on, 274.
 Russia, form of government of, 5, 6.
 Safety, public, preservation of, 134.
 Salaries. *See* the several offices.
 Samoa, 409, 415.
 Sault Ste. Marie Ship Canal, 168.
 Savings banks, postal, 319.
 School district, in Central States, 41.
 Schools, public. *See* Education.
 Secession, 421.
 Secretaries, federal. *See* the several federal departments (State, War, Navy, etc.).
 Sections of townships, 28.
 Selectmen, town, 25.
 Senate, State, 96.
 Senate, United States, origin of, 248-249; representation in, 249; election of Senators, 249-252; term, 252; vacancies in, 109; qualifications of Senators, 252; rights and privileges of members, 253; legislative powers, 253; executive functions, 254; senatorial courtesy, 231, 254-255, 301; judicial powers, 255-256; deadlocks, 250; presiding officer, 270. *See* Congress.
 Separation of powers, 8, 89, 296-297.
 Sessions, regular and special, of city council, 53; of State legislature, 97; of Congress, 267.
 Sewerage systems, 67.
 Shays' Rebellion, 213, 215.
 Sheriff, in England, 17; in United States, 20, 26, 34, 121, 122, 132.
 Sherman Anti-Trust Act, 392-393.
 Shire, origin and government of, 17-18.
 Silver certificates, 360, 366.
 Silver, coinage of, 360-365; purchase of, 362.
 "Slates," political, 451.
 Slavery, abolition of, 228; slave trade, 219.
 Smithsonian Institution, 324.
 Socialist and Socialist-Labor parties, 449.
 Solicitor, city, 56. *See* Attorney, prosecuting.
 South Carolina, 75, 86, 120, 137, 179, 181, 201, 223, 251, 262, 466, 467.
 South Dakota, 29, 30, 31, 35, 104, 117, 178, 181, 251, 466, 467.
 Sovereignty, definition of, 2.
 Spain, government of, 6.
 Spanish-American War, 230.
 Speaker of House of Representatives, 232, 270-274.
 Special assessments, 191-192.
 Special legislation for cities, 43-45.
 Special sessions, of city council, 53; of State legislature, 97; of Congress, 267, 307.

- Specie payments, resumption of, 362, 372-373.
- Speech, freedom of, 240.
- Spoils system, in State government, 42, 47, 112-113; in federal government, 303.
- Staff, general, 317.
- Stamp Act, 81; Stamp Act Congress, 208.
- Standards, bureau of, 324.
- State, definition of, 2; origin of, 1; evolution of, 2; forms of, 4; secretary of, in commonwealths, 109-110.
- State, Secretary of (federal), 313, 314, 403.
- States, origin of, 74-84; constitution of, 86-93; legislative departments of, 95-104; limitations on, under federal constitution, 101-102; executive department, 106-113; judiciary, 115-127; police power of, 129-138; power over crime, 140-147; administration of charities, 151-156; control of economic interests, 158-169; control of education, 172-184; finance, 187-204; interstate and federal relations, 235-238, 242-248; sphere of activity, 7, 248; admission to Union, 91, 420-421; rural local government in, 14-35; city government in, 38-71.
- Streets, city, 66-67.
- Strict construction, 447.
- Strikes, 161.
- Subpoena*, 122.
- Subsidies, ship, 379.
- Succession, presidential, 292.
- Suffrage, qualifications for, 466-467.
- Superintendent of schools, in cities, 65, 180; State superintendent or commissioner, 109, 111, 181.
- Supervisor, township, 31; county, 33.
- Supreme court, State, 119; judges of, 120; appeal to, from lower State courts, 126.
- Supreme Court, United States, 332-333. *See* Judiciary, federal; also Constitutionality of legislation.
- Surrogate, county, 26.
- Surveyor, county, 35; State, 112.
- Surveys, public land, 28.
- Swiss Confederation, 6.
- Switzerland, government of, 6, 7.
- Tariff duties, as a form of tax, 346-347; as commercial regulations, 380-385; insular tariffs, 419.
- Taxation. *See* Finance.
- Tax commissioner, State, 112.
- Teachers, employment and certification of, 181. *See* Education.
- Temperance legislation, 136-137.
- Tennessee, 136, 178, 179, 180, 181, 201, 251, 467.
- Tenure of Office Act, 302.
- Territories, power of Congress concerning, 407, 418-419; territorial acquisitions, 407-409; early territorial legislation, 409-411; government of territories, 412-418; admission of new States, 418-421.
- Texas, 181, 183, 251, 436, 466.
- Text-books, 181.
- Third term doctrine, 291.
- Thirteenth amendment, 228.
- Titles of nobility, forbidden, 242.
- Tonnage tax, 378-379.
- Torts, 122, 140.
- Towns, origin of, 15-16, 18-19; establishment of, in New England, 18; characteristics of, in early New England, 19; general features of, in New England, 24; government of, 24-25; town-meeting in New England, 19, 24-25; in the Central States, 30.
- Townshend Acts, 81.
- Township, origin of in Middle West, 27-28; officers in Central States, 30-31; board, 31; township-county system, 22, 28, 29.
- Trade. *See* Commerce.
- Trade-marks, 169, 440; Trade-mark Cases, 337, 440.
- Trades and callings, regulation of, 135-136.
- Treason, 141, 443.
- Treasurer, county, 26, 34; township, 31; city, 59; State, 109, 110, 111.
- Treasury, federal department of, 314-316.
- Treaties, power over, 254, 306-307.
- Trials, judicial. *See* Procedure, civil and criminal.
- Trustees, township, 31.
- Trusts, State regulation of, 165-166; federal regulation of, 392-393.
- Twelfth amendment, 227.

- Two-thirds rule, 462.
- Unconstitutional legislation. *See*
 Constitutionality of legislation.
- Undervaluation of property, 196.
- Union, colonial plans of, 208.
- Unit rule, 462.
- Universal Postal Union, 319.
- Universities and colleges, 175-177.
- Unwritten constitution of the United States, 230-233.
- Urban. *See* City.
- Utah, 104, 161, 179, 181, 183, 467.
- Vagrants, 154.
- Verdict of jury, 123, 145.
- Vermont, 95, 108, 120, 136, 178, 180, 181, 248, 263, 466, 467.
- Vestry-meeting, in England, 16; in Southern colonies, 21.
- Veto-power, of mayor, 55; of governor, 99, 108; of President, 278, 308-309; of territorial governor, 413.
- Vice-President, election of, 287-288; salary and functions, 292-293.
- Villages, 15.
- Virginia, 27, 75, 84, 120, 168, 176, 180, 181, 201, 209, 210, 215, 222, 223, 251, 262, 409, 467.
- Virginia plan, in Constitutional Convention, 213, 220.
- Volunteers, army, 427.
- Voting, methods of, in Congress, 278; qualifications for, 466-467; registration, 467-468; casting and counting ballots, 471-472.
- War, Department of, 316-317; powers of President and Congress, 230, 297-298, 424-426; declaration of war, 425. *See* Military functions, Militia.
- War of 1812, 398; other American wars, 424.
- Warrants, police, 142-143.
- Washington, D. C., government of, 414-415; street-plan of, 67.
- Washington (State), 35, 181, 251, 262, 466, 467.
- Washington, George, 216, 222, 224, 399, 403, 446.
- Wastes, disposal of, 67.
- Water supply, city, 68.
- Waterways, 168.
- Ways and Means Committee, in House of Representatives, 342.
- Weather bureau, work of, 323.
- Weights and measures, State superintendent of, 112; regulation of, 168; 169, 390, 440-441.
- Western land cessions, 409.
- West Point, 184, 428.
- West Virginia, 27, 120, 159, 176.
- Whig party, 448.
- White House, the, 291, 292.
- Wilson Tariff Law, 382.
- Wills, probate of, 119.
- Wisconsin, 29, 30, 31, 57, 113, 145, 151, 159, 161, 174, 175, 176, 178, 181, 251, 409, 466, 467.
- Woman's suffrage, 467.
- Work-houses, 146.
- Working-classes. *See* Labor.
- World power, United States as a, 400-401.
- Wrongs, redress of, 122-124.
- Wyoming, 35, 176, 181, 262, 466, 467.

The Riverside Press
CAMBRIDGE . MASSACHUSETTS
U . S . A

MAR 24 1911



An Enabling Act was passed by the 61st Congress, under which Arizona and New Mexico

H 101 83 ~~C 184 82~~





JAN 83
N. MANCHESTER,
INDIANA 46962

LIBRARY OF CONGRESS



0 003 213 774 A